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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 166

GULF, MOBILE AND OHIO RAILROAD COMPANY,
Petitioner,

vs.

PEOPLE ex rel. JAMES T. CALLAHAN, County Collector of Madison County, Illinois,
Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of Illinois.

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of Madison County, Illinois,
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PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of Illinois.

The petitioner, Gulf, Mobile and Ohio Railroad Company, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois, entered in the above entitled cause on January 19, 1956.

REFERENCE TO REPORTS OF OPINION BELOW.

The opinion of the Supreme Court of Illinois is reported at 8 Ill. 2nd 60, 132 N. E. 2nd 544 (Advance Sheet No. 4). No opinion was rendered in the trial court.

JURISDICTION.

The opinion of the Illinois Supreme Court was filed on January 19, 1956 (R., 9).[1] Judgment of the Court was entered as of January 19, 1956 (R., 15). A timely petition for rehearing was denied on March 19, 1956 (R., 23).[2] The motion of the Railroad that the State Supreme Court consider the exercise of its power *ex mero motu* to order an amendment of the pleading was denied on March 15, 1956 (R., 22).

This court has jurisdiction of this cause under 28 U. S. C., Sections 1257 (3) and 2101 (c).

QUESTIONS PRESENTED.

The questions presented for review are:

1) Did the stricken tax objections of the Railroad adequately present the defense of denial of due process of law and of the equal protection of the laws, under the Fourteenth Amendment to Federal Constitution?

2) Was the Railroad deprived of due process of law and of the equal protection of the laws by the capricious application of a standard of pleading in this case, not provided by the statute establishing the remedy, and not applied in other tax objection cases, the practical effect of which was to by-pass these asserted federal rights and to deny to the Railroad its only efficient remedy for the enforcement of such rights?

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[1] Matters appearing only in the transcript of record in this court are indicated by "R., ...". Those matters appearing in the printed abstract of record before the Illinois Supreme Court are indicated by "Abst., ...".

[2] The dissenting opinion of the Chief Justice which appears in the transcript immediately following the majority opinion, was in fact filed on March 19, 1956, the day the petition for rehearing was denied. The judgment of the court was entered as of the date of the majority opinion on March 23, 1956, upon the adjournment of the March term of the court.

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED.

The Constitutional provisions and statutes and rules which this case involves are:

(1) The "due process" and "equal protection" clauses of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

(2) The provisions of the 1939 Revenue Act, as amended and in effect in the year 1951, which required locally assessed property to be assessed by local assessing officers, to be reviewed and corrected by the County Board of Review, and to be equalized by application of a multiplier determined by the State Revenue Department at **full fair cash value.**[3] Sections 17, 20, 21 and 73 through 77, 94, 100, 107, 108 (5), 111, 127, 128, 129, 130, 131, 146, 149 and 151 of the 1939 Revenue Act of Illinois, as amended. 1951 Illinois Revised Statutes, Ch. 120, pars. 498, 501, 502, 554-558, 575, 581, 588, 589 (5), 592, 608, 609, 610, 611, 627, 630-632.[4]

(3) The provisions of said 1939 Revenue Act requiring railroad property to be assessed and equalized by the State Department of Revenue at full fair cash value and to be

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[3] It was conceded by the Collector, and found by the Supreme Court of Illinois, that the sections of the Revenue Act referred to required all valuations of property subject to *ad valorem* taxation to be developed and extended at full, fair cash value. The court said in its opinion, "the parties agree, as indeed they must, that the Revenue Act requires all valuations upon which tax rates are developed and extended to be at full, fair cash value." Separate Appendix A.

[4] All references to the Illinois Statutes refer to the State Bar Association and the Smith-Hurd Annotated editions of the Illinois Constitution and Statutes. Chapters and sectional arrangements are the same. The State Bar Association volumes are published biennially and the 1951 edition is used for referral purposes because 1951 taxes are here involved. However, with minor exceptions the subsequent editions of the State Bar Statutes would contain the applicable statutory provisions.

locally taxed as "other real estate."[5] Sections 17, 80, 85, 86, 88, 90, 130 and 131 of the 1939 Revenue Act; 1951 Illinois Revised Statutes, Ch. 120, pars. 498, 561, 566, 567, 569, 571, 611 and 612.

(4) The provisions of said 1939 Revenue Act defining the remedy of tax objection in the County Court upon the application of the Collector for judgment for taxes paid under protest, and requiring the court to hear and determine the matter in a **summary** manner, **without pleadings**, and to pronounce judgment as the right of the case might be, and which authorized amendments to a tax objection as in other cases. Sections 194, 232, 234 and 235 of the 1939 Revenue Act; 1951 Illinois Revised Statutes, Ch. 120, pars. 675, 713, 715 and 716.

(5) The provisions of the Civil Practice Act and the Illinois Statute of Amendments and Jeofails authorizing amendments to any pleading in any court prior to final judgment. Sections 46 and 92 of the Illinois Civil Practice Act and Sections 1, 6 and 7 of the Statutes on Amendments and Jeofails; 1951 Illinois Revised Statutes, Ch. 110, pars. 170 and 216, Ch. 7, pars. 1, 6 (5), (9) and 7.

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[5] Sections 86, 146, 149 and 151 of the Act, as amended in the year 1945, and then added Section 162a were known as the *Full Valuation Acts* and constituted comprehensive basic tax reform legislation intended to accomplish full fair cash valuation for all taxable property in Illinois, as assessed or equalized for purposes of *ad valorem* taxation. 162a placed a floor under, and a ceiling over, local tax levies which might otherwise have been rendered insufficient or exorbitant as a result of the full valuation reform and the reduced tax rates which were simultaneously placed in effect by ninety other companion acts. It was shown in the Illinois Supreme Court (Appendix to Appellant's brief in that Court; R., 5); that it was publicly acknowledged that the reform was not effective in respect to locally assessed property, being ignored and knowingly violated at the local level where the assessment function was performed, and initial debasement occurred, and being intentionally and flagrantly violated at the state level in the determination of the multiplier to be applied to the debased local assessments to produce equalized full fair cash value.

(6) The Rule 39 of the Illinois Supreme Court applicable to all appealed cases, limiting matters to be considered to those presented by the record in the lower court and briefed and argued in that court. Rule 39 of Illinois Supreme Court Rules, effective in 1955; 1953 Illinois Revised Statutes, Ch. 110, par. 259.39, and Amended Rule 39, effective on and after January 1, 1956; 1955 Illinois Revised Statutes, par. 101.39.

STATEMENT OF THE CASE.

This is a tax objection proceeding which originated in the County Court of Madison County, Illinois, upon the Railroad's objections to the application of the County Collector for judgment for 1951 taxes paid by the Railroad under protest.

The Collector interposed a motion to strike the Railroad's objections. The motion was sustained and judgment awarded the Collector for the full amount involved—$18,578.38. An appeal was taken to the Illinois Supreme Court, which affirmed the County Court upon grounds not previously raised or considered.

Questions as to a denial of due process of law and of the equal protection of the laws evolved from the alleged unlawful discrimination against the Railroad in the *ad valorem* taxation of its property and the action of the Illinois courts in refusing to consider the merits of such objections.

The Railroad claimed by its stricken objections that it had been excessively, fraudulently and illegally taxed in Madison County for the year 1951 because of the intentional under-valuation of all locally assessed property in Madison County in wilful disregard and flagrant violation of the 1939 Revenue Act, as amended, at not exceeding 60 percent of the full, fair cash value of such property and

the assessment at full, fair cash value, or 100 percent assessment, of the Railroad's property.

The Railroad seeks to recover the amount of excess tax extended against its property as the inevitable result of rates developed through the use of assessments of locally assessed property admittedly assessed at not more than 60 percent of its full, fair cash value, together with assessments of property as made by the Department of Revenue, which assessments were admittedly at 100 percent of full, fair cash value.

With exceptions not here relevant, tax rates in Illinois are developed by the simple process of dividing the total assessed value of the particular taxing unit into the total amount sought to be levied by that unit. The resulting quotient is the rate. Expressed as a formula it is:

$$\frac{\text{Levy}}{\text{Assessed Value}} = \text{Rate}$$

It follows from the use of this formula that the rate increases or diminishes directly as the assessed value is lowered or raised. That is, the smaller the assessed value the higher the rate and the larger the assessed value the lower the rate.

Since the assessed value against which the 1951 taxes in Madison County were extended consisted of local assessments at not more than 60 percent of full, fair cash value on the one hand and assessed values fixed by the Department of Revenue at 100 percent of full, fair cash value on the other, it follows that the divisor in the formula (total assessed value) was lower than it should have been and the quotient (rate) higher than it should have been.

The Railroad contends that by being forced to pay taxes on rates higher than would have been developed if assessed

values of locally assessed property in the divisor for each taxing district had been at the equivalent of 100 percent of full, fair cash value, it is denied the equal protection of the laws; and, that the failure of the Illinois courts to allow the Railroad to pursue the statutory remedy for the recovery of such excess taxes, denies to it due process of law.

The objections of the Railroad were in two forms. By its Objection No. 1, the Railroad stated its case in respect to all the taxes claimed to be excessive because of such discrimination, and in this objection and a comprehensive and detailed table identified as "Schedule A", affirmatively and directly alleged all the controlling and material facts of the valuations, levies and rates and computed the amounts of excess taxes resulting from the alleged and demonstrated inequality and discrimination in the assessment and valuation of property. Other "specific objections" related to each of the several taxes objected to and independently, affirmatively and fully alleged the controlling and material facts in respect to each subject tax (Abst., 3-22, 28-40). The objections were amended to meet all points relating to their form raised by the motion, so that they might be considered solely upon their merits (Abst., 28-40).

The controlling facts alleged in the amended objections were admitted by the motion and may be briefly stated. The excessive taxation of the Railroad's property objected to is alleged to have resulted from the knowing and intentional violation of the said 1939 Revenue Act, as amended and in effect in 1951, by: (a) the local assessing officers of Madison County; (b) the Board of Review of said County; and (c) the State Department of Revenue, who are alleged to have, knowingly and intentionally, separately and collectively, violated the law and *knowingly and intentionally* produced assessed valuations of locally assessed property of not to exceed 60 percent of the

required statutory standard of full, fair cash value, at which such property was included in the tax base and taxed, while the law was obeyed as to the property of the Railroad, which was assessed and taxed at full, fair cash value.[6] It is shown by computations based upon such admitted facts, that as a result of the discriminatory assessment of locally assessed property, excessive and discriminatory taxes were levied upon the property of the Railroad in Madison County in 1951, in the total sum of $18,578.38 (Abst., 3-22, 38-40).

The admitted facts are a recital of the notorious practice of debasement of locally assessed valuations in Illinois,

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[6] The objection alleged that the assessors knowingly assessed such locally assessed property upon the valuation of not to exceed 10.2 percent of its full fair cash value, and that such valuations were certified by the County Board of Review without changing or revising the general level of the assessments with knowledge that the same was assessed at such debased value (Par. 3 of the objections; Abst. 3). It is further alleged that the Department of Revenue certified a multiplier which was knowingly and intentionally fixed by the Department at a percent which would produce a debased equalized and assessed valuation of not to exceed 60 percent of the full fair cash value of such property (Par. 4 of the objections; Abst. 4). It is also alleged that the 1951 taxes upon railroad property was levied upon a basis which discriminated against such property and the railroad in favor of "locally assessed property taxable in said county and districts, and the owners thereof, in that such locally assessed property was not valued at its full, fair cash value in either its assessment by the assessing officers of said district and county, or as equalized by application of the equalization rate certified by the Department of Revenue, but was *knowingly and intentionally* valued, assessed and equalized at a lesser value, to-wit: not exceeding 60% of its fair cash value, and lacked uniformity and was unequal in respect to the property of this Objector; and that the taxes levied by said county and the said several taxing districts when extended against all the property locally assessed and other property taxed in said county and taxing districts, including the property of this Objector, which was assessed *and equalized by the said Department at the State level at the full fair cash value thereof*, as provided by, under and in accordance with Sections 79 to 86, inclusive, and Section 88 of the 1939 Revenue Act, as amended, produced discriminatory, arbitrary, fraudulent, excessive, unconstitutional, wrongful and illegal rates of taxation upon Objector's property;" (Par. 9 of the objections; Abst. 7, also see Abst. 10-21, 9, 32-33).

through a consistent, concerted pattern of action on the part of the assessing and equalizing authorities charged with the duty of administering the Illinois Revenue Act, at all levels of government, designed to produce debased assessments without regard to the full valuation requirements of the Illinois Revenue Act of 1939, as amended. Such maladministration produced in Madison County for the year in question a debased valuation of locally assessed property, intentionally arrived at, which resulted in the alleged gross discriminatory taxation upon the Railroad and its property.[6a]

FEDERAL QUESTIONS PRESENTED IN THE COUNTY COURT.

It was contended by the Railroad in each objection that, by reason of the alleged discrimination, it had been excessively and illegally and fraudulently taxed in the demonstrated excessive amounts, in violation, *inter alia*, of the applicable provisions of "the 1939 Revenue Act, * * * and the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States" (Abst., 10, 13, 18).

FEDERAL QUESTIONS IN ILLINOIS SUPREME COURT ON APPEAL, AND DISPOSITION.

Upon appeal, in the Supreme Court of Illinois, the Railroad relied upon all grounds of objection asserted in the County Court, and also contended that, by the striking of its objections, the lower court had refused it the only efficient remedy provided by law against the alleged and admitted unequal and discriminatory taxation of its property and in so doing had denied it due process of law

[6a] Separate Appendix E, pages 35-41, and see Appellant's brief, pages 27-28, R. 5, and Appendix to Appellant's brief, pages 56-69.

and equal protection of the laws (Brief of Appellant, errors relied upon, pages 10-11, points and authorities and argument, I, II, III, and V, pages 12-17, 18-28, 42-48; R., 5).

The majority opinion of the Illinois Supreme Court held that, notwithstanding it appeared the Railroad was entitled to relief upon the defense of constructive fraud, and had chosen an appropriate remedy to assert such defense, and without referring to the statute defining the remedy or to any other precedent, the objections, as amended, were properly stricken because the "bare allegations" of the value of locally assessed property contained therein were insufficient to

> "Afford a basis for accepting the allegation that local property was assessed at other than its full, fair cash value or which would permit the court to make the comparison in values, the appellant seeks to draw, upon the defense of constructive fraud."

The question before the court in considering the propriety and justice of the order of the trial court striking the objections, was not the acceptance of the truth of the allegations of value which were ultimate facts subject to proof at the hearing on the merits, but *the sufficiency of the facts, if proved, to establish a defense, and the right to make such a defense.* Since the objections were not heard, the evidence to prove the allegations in question was not before the court and the acceptability of the allegations was not subject to determination.

The majority opinion ignored and did not consider the defenses presented by the amended objections that the Railroad had been denied due process and the equal protection of the Revenue Laws of Illinois in the taxation of its property, and that the action of the County Court in striking the amended objections and in awarding judgment to the Collector, had deprived it of its sole efficient

remedy to avoid the discriminatory and excessive taxation objected to, and that thereby the Railroad had been denied due process of law. The objections were stricken by the County Court and the action of striking was affirmed by the Illinois Supreme Court. The remedy provided by the Act for the distressed taxpayer was, therefore, effectively refused upon federal, as well as the state grounds referred to in this opinion.

QUESTIONS PRESENTED BY THE PETITION FOR REHEARING.

By timely petition for rehearing the Railroad pointed out that it had not relied upon "bare allegations" of value and that all essential ultimate facts to be compared had been affirmatively stated, that counsel were unable to find in the Collector's motion to strike any assigned reason which supported the criticism upon which the court's opinion was based, and that, under rules of Illinois practice, the question not having been raised, had been waived (Petition for Rehearing, Point I, pages 4-10, R., 17).

It was further pointed out in the petition for rehearing that the remedy of tax objection was defined by statute, to be of a summary nature "without pleadings," and that the court had held it sufficient if, upon reading an objection, court and counsel could readily understand the questions presented for determination, and had repeatedly declined to consider technical criticism of tax objections which met this test (Petition for Rehearing, Point II, pages 10-17, R., 17). It was also pointed out that the court had previously defined both the form and substance of an identical defense of constructive fraud to be those contained in the subject objections.[7]

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[7] People v. K & H Bridge Co., 287 Ill. 246, 247-8, 122 N. E. 467, referred to in dissenting opinion of the Chief Justice.

The court's attention was also called to the many Illinois and Federal decisions holding similar disparity in the assessment of property for purposes of taxation to be discriminatory, and to support a similar remedy. (Petition for Rehearing, Point III, pages 17-22, R., 17.)

The petition also called the court's attention to its failure to consider the defenses based upon the due process and equal protection clauses presented by Point V of Appellant's brief and argument, in which it was contended that:

> "The order and judgment complained of erroneously confirmed the usurpation of legislative power and violation of the Act by those charged with its administration and denied the Railroad the sole efficient remedy for the protection of its rights. The Railroad was, thereby, denied due process of law and the equal protection of the laws, and was subjected to taxation lacking both in statutory and constitutional uniformity in violation of * * * the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Federal Constitution." (Petition for Rehearing, Point IV, pages 22-23, R., 17.)

FEDERAL QUESTIONS ORIGINATING IN THE DECISION OF THE ILLINOIS. SUPREME COURT.

Lastly, in its petition for rehearing, the Railroad further contended that:

> "Since the objections fairly state tax discrimination injurious to the railroad resulting from inequality and discrimination in the administration of the Act, and constituting constructive fraud under the decisions of this court, for which the remedy of tax objection is applicable as a matter of law, **the opinion of the court**

amounts to a capricious withholding or refusal of this statutory remedy to the objector in violation of the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States * * * the court has misapprehended the factual and pleading aspects of the remedy of tax objection, and has attached thereto and here applied requirements without the scope of Secs. 194 and 235 of the 1939 Revenue Act, as amended, which defeat the purpose and intention of the statute, and which requirements are not uniformly applied by this court in other tax objection cases. We respectfully submit, that, by this decision, the rights of the railroad to equal protection under the Act and to due process as provided by the Act, have been even further invaded.

"This invasion is predicated upon a technical pleading point not clearly presented in the lower court and not clearly defined in this court, although this court has held a technicality should not be considered in a case of this kind, at a time when raising it is unavoidably prejudicial to the objector.

"By thus circumscribing the remedy and withholding it from the objector, so that the plain provisions of the statute are defeated, the court denies the railroad its only efficient remedy for the relief sought, imposes a different standard of pleading to the subject tax objections than is provided by law and is acceptable in other cases, and deprives the railroad of both equal protection and due process under the Fourteenth Amendment" (Petition for Rehearing, Point V, pages 23-24, R., 17). (Emphasis supplied.)

MOTION EX MERO MOTU.

With its petition for rehearing, the Railroad filed a motion that the Supreme Court consider the exercise of its power *ex mero motu* to order an amendment of the subject objections meeting its criticism. The court declined to allow the motion.

DISSENT.

The dissenting opinion of Chief Justice Hershey of the court, filed on the day the court ruled upon the petition for rehearing, confirms the views of the Railroad expressed in the petition for rehearing (Appendix B).

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

1. The Case Presents Questions of Importance to Every Taxpayer and Taxing Authority in the State of Illinois.

Involved is (1) the loss of an estimated $21,033,219,016 in ad valorem tax values in the State of Illinois, and (2) a shifting of approximately $14,197,769 in ad valorem taxes from locally assessed to state assessed property.

Government below state level in Illinois is supported almost entirely by ad valorem taxes. It is estimated that for 1951, tax bills totaling approximately $524,000,000 were presented Illinois property owners.

The assessed value of the property subjected to a lien for the payment of such bills, so taxed, divided according to whether its 1951 assessment was at local or state level, was as follows:[8]

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[8] Ninth Annual Report of the Department of Revenue, State of Illinois.

Locally assessed property	$23,359,391,884
State assessed: railroad property.....	1,084,964,000
: Capital Stock Cos.....	381,847,950

According to figures released by the Department of Revenue of the State of Illinois for 1951, the $23,359,391,884 assessed value of locally assessed property shown above represented only 52.62%[9] of the full, fair cash value of such property. Thus, if all such locally assessed property had been assessed at its full, fair cash value, as required by law, then the total assessment of such property would have been $44,392,610,900. The failure to so assess such property has caused a loss in tax values of approximately $21,033,219,016.[10]

The failure of public officials charged with the duty to assess and equalize local property valuations at the 100% level of full, fair cash value at which railroads and Capital Stock companies in Illinois were admittedly assessed, has caused a demonstrable shift in the tax burden from locally assessed to state assessed property.

On the basis of the above figures it is estimated that if locally assessed property had been assessed at its full, fair cash value of $44,392,610,900, then the effective tax rates against **all** taxable property would have been reduced with the following (estimated) results:

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[9] Report of the Illinois School Problems Committee No. 3, to the Governor of Illinois and the 69th General Assembly (Separate Appendix E, pages 38-41).

[10] This figure is a figure nearly equal to the all-time high of $21,374,825,121, constituting the total assessed value of all real property in New York City. The comparable loss alleged by the Railroad to have occurred in Madison County in 1951 was $330,000,000 (Abst., 9).

1. the tax bills of the 74 railroad companies[11] in the state with 23,135.7 miles of track would have been reduced from.....$22,899,250
to..... 12,396,582

a reduction of $10,502,668

2. the tax bills of 15,414 Capital Stock companies would have been reduced from..$ 8,059,283
to..... 4,362,918

a reduction of .....$ 3,696,365

The approximate $14,200,000 reduction of the taxes on state assessed property would be added to the taxes to be borne by locally assessed property and thus represent the extent to which the tax burden has been unlawfully shifted from local to state assessed property.

Here the objecting taxpayer seeks to maintain its remedial right, conferred by statute, to avoid the excessive, discriminatory and unjust taxes levied upon its property by reason of the acknowledged inequality in assessments.

2. The Illinois Supreme Court Has Decided Federal Questions of Substance in a Way Not in Accord With the Applicable Decisions of this Court.

A.

The Illinois courts effectively denied the independent federal defenses of denial of due process and equal protection, which were well pleaded, without having considered the merits of such defenses.

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[11] The number of railroad companies, their mileage in Illinois and number of capital stock companies assessed by the Department of Revenue was taken from the Ninth Annual Report of the Department of Revenue, State of Illinois.

Without here repeating the facts stated in the objections, as amended (Abst. 3-22, 28-40), reference may be made to the summary contained in the court's opinion (Separate Appendix A) and statement herein at pages 7 and 8.

There were presented almost classical examples of a denial of due process and of unequal protection. If proved, the facts stated would have established that the Railroad had been unlawfully taxed through gross discrimination in the evaluation of locally assessed property and had been denied the rights of due process and equal protection of the Illinois Act in violation of the Fourteenth Amendment.[12] In considering the motion to strike, and for all purposes upon questions arising from the allowance of the motion, these facts were admitted by the motion.[12a] (**People v. Keokuk and Hamilton Bridge Co.**, 287 Ill. 246, 248-250, 122 N. E. 467; **Aldrich v. Harding**, 340 Ill. 354, 359, 172 N. E. 772; **Tuttle v. Bell**, 377 Ill. 510, 512, 37 N. E. [2d] 180.)

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[12] Discrimination in the valuation of property of an objecting taxpayer upon which taxes objected to are based, arising out of intentional undervaluation of other taxable property, as alleged in the subject objections, is a denial of equal protection of the laws in violation of the Fourteenth Amendment. *Hillsborough Township v. Cromwell*, 326 U. S. 620, 623-624; *Concordia Fire Insurance Co. v. Illinois*, 292 U. S. 535, 540—a ratio 100 to 60; *Cumberland Coal Co. v. Board of Revision*, 284 U. S. 23, 28-29—a ratio 100 to 50; *Green v. Louisville and I. R. Co.*, 244 U. S. 499, 508, where there occurred an assessment of .75 of full valuation of complaining taxpayers' property compared with a .52 assessment for other taxpayers—a ratio 100 to 70.6; *Sioux City Bridge Co. v. Dakota*, 260 U. S. 441, 446—a ratio 100 to 55; *Raymond v. Chicago Union Traction Co.*, 207 U. S. 20, 35-36, holding that the Fourteenth Amendment applies equally to the executive and judicial divisions of state government as to the legislature—a ratio 100 to 65. And see *Chicago Railway Co. et al.* and *People v. Sullivan et al.*, Seventh C. C. A. (1949), 175 F. 2d 282, 286-288.

[12a] It is to be noted that the amended objections did not rely upon mere undervaluation of locally assessed property. Knowledge and intention on the part of the local assessors and Board of Review to assess and certify such property at a debased value of 10.2 percent of full value, and knowledge and intention of the Department to certify a multiplier to equalize such debased assessments at not

Failure of the Illinois Supreme Court to refer to the federal defenses in its opinion did not have the effect of avoiding their consideration by this court. The order and judgment of the County Court were founded upon the order allowing the Collector's motion to strike the objections, as amended and it was necessary for the court to pass upon the sufficiency of the facts alleged to support such defenses in its consideration and ruling upon the motion to strike and in entering judgment. The judgment of the Supreme Court of Illinois affirmed the judgment of the lower court.

It has been invariably held to be sufficient if the decision of the state court necessarily denied the asserted federal rights in the judgment rendered. (**St. Louis, I. M. & S. R. Co. v. Starbird,** 243 U. S. 592, 601; **Chicago, B. & Q. R. Co. v. Chicago,** 166 U. S. 226, 231). Federal questions fairly presented by the record will be reviewed and the failure of the state court to pass upon an asserted federal defense is not conclusive, even though its judgment rests upon an independent, separate ground of local or general law, and, if the necessary effect of the judgment of the state court is to deny the defense which, if considered and established, would require judgment different from that of the state court, this court will take jurisdiction and decide the federal questions presented. (**Chicago, B. & Q. R. Co. v. Illinois ex rel. Grimwood,** 200 U. S. 561, 580-581; **West Chicago Street R. Co. v. Illinois ex rel. Chicago,** 201 U. S. 506, 520.)

In determining whether federal defenses were adequately presented and by-passed, this court is not concluded by

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to exceed 60 percent of full cash value, are expressly alleged. The overvaluations are shown to have been arrived at systematically, and the practices described have been officially acknowledged to be representative of assessment and equalization procedure in Illinois. (*Great Northern R. Co. v. Weeks,* 297 U. S. 135, 139; *Charleston Federal Savings and Loan Association v. Alderson,* 324 U. S. 182, 190-191, Separate Appendix E.)

the decision of the state court. (**Ellis v. Dixon,** 349 U. S. 458, 463.) Federal rights can not be defeated by the forms of local practice. (**Brown v. Western Railway of Alabama,** 338 U. S. 294, 296; **American Railway Express Co. v. Levee,** 263 U. S. 19, 21; **Davis v. Wechsler,** 263 U. S. 22, 24.) Whether a pleading sets up a sufficient defense grounded upon the Constitution of the United States is necessarily a question of federal law, and this court must determine for itself the sufficiency of the pleadings presenting such defense. (**First National Bank v. Anderson,** 269 U. S. 341, 346; **Mitchell v. Clark,** 110 U. S. 633, 645; **Boyd v. Nebraska,** 143 U. S. 135, 180; **Covington & L. Turnp. Co. v. Sandford,** 164 U. S. 578, 595.) While questions of pleading are normally local questions, this court must construe the amended objections to determine whether the federal questions here relied upon were presented. (**Carter v. Texas,** 177 U. S. 442, 447; **St. Louis S. W. R. Co. v. Arkansas,** 217 U. S. 136, 149.) Whether the rights and questions were sufficiently pleaded or brought to the attention of the state courts, and whether the determination of such questions are necessary for a determination of the case are federal questions to be determined upon the record. (**Grannis v. Ordean,** 234 U. S. 385, 394; **Honeyman v. Hanan,** 300 U. S. 14, 18.)

It is respectfully submitted that the amended objections of the Railroad presented its federal defenses in the County Court and in the Supreme Court in a form clearly sufficient to require their consideration upon the merits and that the striking of such objections denied the Railroad its only efficient remedy and due process of law as the Illinois statute had in such case provided, and that this court should accept jurisdiction for the purpose of requiring the reinstatement of the objections so that the same may be heard upon the merits of the asserted federal defenses.

B.

The Railroad was deprived of due process and equal protection by the judgments of the Illinois courts after their capricious and arbitrary rejection of all defenses.

The sole remedy provided by law in Illinois for the escape of a taxpayer from unlawful or unjust taxation is that of tax objection (Secs. 194, 235 of the 1939 Revenue Act; 1951 Ill. R. S., Ch. 120, 675, 716). **Section 194** provides that any taxpayer who has paid 75 percent of the tax complained of under protest and appears at the next application for judgment for such taxes may object thereto, and "where the taxpayer appears and files objection the court shall hear and determine the matter according to the right of the case and enter judgment for any part of the taxes, or order a refund of any part of the taxes so paid under protest.[13] **Section 235** provides, in part, that "the court shall hear and determine the matter (of tax objection) in a **summary manner, without pleadings and shall pronounce judgment as the right of the case may be.** * * * If any party objecting to any tax paid under protest **is entitled to a refund of the amount, or any part thereof, so paid under protest, the court shall enter judgment accordingly.**" (Emphasis ours.) There is no limit or condition to the defense which may be offered by a taxpayer in the form of a tax objection to the Collector's application for judgment for an unlawful tax which has been paid under protest.[14]

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[13] No questions arise as to procedure followed upon the subject objections in perfecting the remedy in conformity with the statute.

[14] The very nature of a tax objection, pursued solely for the purpose of recovering protested taxes theretofore paid, negatives the use of this remedy for the purpose of securing a reassessment of property, which is inhibited by Section 1 of Article IX of the Illinois Constitution. There is literally nothing to support the language of the Supreme Court's opinion in this case, that it might consider only a defense of fraud or constructive fraud, if, in fact, other valid defenses were presented by the objections. However, it should be

The remedy of tax objection is an informal, summary proceeding for which pleadings are not required and which is decided at the hearing of the objection, upon the evidence then before the court as the right of the case may be. Illinois cases have uniformly held that a tax objection is not subject to technical criticism, and that it is sufficient if the objection contains a clear and concise statement, couched in simple language, of sufficient ultimate facts to show the point relied upon. (**People v. Ridge Country Club**, 399 Ill. 46, 57, 76 N. E. 2d 456; **People v. K. & S. W. R. R. Co.**, 237 Ill. 362, 367, 93 N. E. 773; **People v. C. B. & Q. R. R. Co.**, 281 Ill. 500, 503, 96 N. E. 890; **People ex rel. Stuckart v. Shortall**, 287 Ill. 150, 151, 122 N. E. 60.) In a case directly in point upon a similar defense the Illinois Supreme Court held a brief statement of the ultimate facts sufficed. (**People v. K. & H. Bridge Co.**, 287 Ill. 246, 248-250, 122 N. E. 467.) A defense of constructive fraud, as well as the federal defenses was sufficiently alleged under the Illinois statute.

In **People ex rel. v. Turk**, 391 Ill. 424, 63 N. E. 2d 513, the Illinois Supreme Court said:

> "In the assessment of property, **constructive fraud is established in various ways.** In **People v. Stewart,** 315 Ill. 25, we held where there is an entire absence of proof to sustain the assessment, and the evidence[14a] in connection with other circumstances shows an overvaluation which is excessive, the conclusion is required that it did not arise from error in the exercise

noted that there is little difference in the ultimate facts supporting a defense of denial of the federal rights to due process and equal protection and the local defense of constructive fraud (*Charleston Federal Savings and Loan Association v. Alderson*, 324 U. S. 182, 190-191). In this case the same ultimate facts supported all defenses. Proof of the facts might vary because presumptions available in one might not be relied upon in another defense.

[14a] The evidence proving the alleged facts determined whether the defense was established at the hearing.

of honest judgment, but was arbitrarily and intentionally made. In **People ex rel. Wangelin v. St. Louis Bridge Co.**, 357 Ill. 245, it is held that in case of over-valuation it is not necessary that intentional fraud be shown, but that where the evidence clearly establishes the assessment was made either in ignorance of the value of the property, or on a judgment not based upon readily obtainable facts, or that **the property was designedly excessively valued**, such conduct on the part of the taxing authorities amounts to a constructive fraud. * * * As late as the case of **People v. Wilson**, 367 Ill. 494, the rule is laid down that where the circumstances show the property to have been grossly over-valued, and the assessed valuation is reached under circumstances showing either lack of knowledge of values upon the part of the assessor making the assessment, or a **deliberate and knowing fixing of values contrary to the known value, fraud in law will be inferred**, and the court will protect the rights of the taxpayers." (Emphasis ours.) (pp. 427-428.)

And in **The People ex rel. Wangelin v. Wiggins Ferry Co.**, 357 Ill. 173, 191 N. E. 296, it was said at page 179:

> "* * * if the facts[14a] show that the taxing authorities have assessed the property for taxation purposes at a valuation grossly in excess of **its market value**, and that such assessment **was deliberately and willfully made, such conduct amounts to a constructive fraud, and the courts will intervene to protect the taxpayer against the wrong undertaken to be perpetrated against him.**" (Emphasis ours.)

The amended objections alleged gross, intentional under-assessment of locally assessed property. The alleged gross

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[14a] The evidence proving the alleged facts determined whether the defense was established at the hearing.

discrimination in the final assessment was founded upon an alleged ratio of 100% of full value for the railroad's property to not to exceed 60% of full value for locally assessed property, a differential of not less than 40%.[15]

The criticism of the objections upon which the opinion of the Illinois Supreme Court, in considering the defense of constructive fraud, was founded was not raised by the motion to strike, was not considered in the trial court, was not presented by any brief or argument in the Supreme Court and was waived under Illinois rules of practice and procedure and, if and when raised, was curable by amendment. (**People v. C. B. & Q. R. R. Co.**, 282 Ill. 206, 217, 118 N. E. 336; **C. M. & N. R. R. Co. v. People**, 207 Ill. 312, 314-5, 69 N. E. 854; **People v. A. T. & S. F. R. Co.**, 389 Ill. 204, 207, 58 N. E. 2d 916; Rule 39 of the Illinois Supreme Court, Appendix D.)

It must be conceded that the action of the Illinois Supreme Court in sustaining the trial court, and the final judgment of the trial court after striking the objections,

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[15] The court found gross discrimination and resulting constructive fraud in each of the following cases: The ratio of assessment and percent of discrimination or overvaluation upon which the wilful violation was presumed are indicated after each citation. *People v. C. M. & St. P. R. R. Co.*, 381 Ill. 58, 44 N. E. 2d 566—ratio of 50 to 35, 30%; *People v. K & H Bridge Co.*, 287 Ill. 246, 250, 122 N. E. 467—simply 40% overassessment; *People v. Ill. Central R. R. Co.*, 355 Ill. 605, 190 N. E. 82—ratio of 60 to 37, 37.5%; *People v. Stewart*, 315 Ill. 25, 29-30, 145 N. E. 600—ratio 100 to 60, 40%; *People v. C. B. & Q. R. R. Co.*, 300 Ill. 399, 133 N. E. 467—ratio 100 to 50, 50%; *People v. Union Station Co.*, 383 Ill. 153, 48 N. E. 2d 524—ratio 85½ to 40, 46.7%; *People v. Commonwealth Edison Co.*, 376 Ill. 70, 73, 77, 32 N. E. 2d 902—ratio of (80% book value × 37%) to (60% book value × 37%), a discrimination of 23.9%; *Peoples Gas Light and Coke Co. v. Stuckart*, 286 Ill. 164, 121 N. E. 629—ratio 100 to 50, personal property, 100 to 60, real estate, 40% to 50%; *C. & A. R. R. Co. v. Livingston County*, 68 Ill. 458, 461—ratio 2/3 to 1/3, 50%; *C. C. C. & St. L. Ry. Co. v. People*, 223 Ill. 17, 20, 79 N. E. 17—ratio 100 to 69, 30.1%. And in *Bureau County v. C. B. & Q. R. Co.*, 44 Ill. 229, a leading case the ratio held discriminatory and fraudulent was 100 to 66-2/3.

which clearly and fully presented independent defenses of constructive fraud and of denial of due process and equal protection, and which complied with and met every test provided by statute and by previous applicable Illinois and federal decisions, were arbitrary and capricious judicial acts, not founded upon law or the right of the case, and effectively served to deprive the Railroad of its only efficient remedy for the presentation of these defenses.

Since the rulings in question served to deprive the Railroad of a hearing of its objections as to all of its defenses, and the opportunity to be heard and present evidence is the essence of due process, it follows that the striking of the objections in the trial court and the entry of judgment upon the Collector's application without a hearing of the defenses presented by the objections, and the affirmance of the trial court judgment by the Illinois Supreme Court were each a denial of the due process and equal protection guaranteed by the Fourteenth Amendment.[16]

The grounds relied upon by the Illinois Supreme Court in refusing to accept the facts pleaded for the defense of constructive fraud were without foundation or substance in the light of the provisions of the statute establishing the remedy, and prior cases construing it and defining the defense. The final decision of the state court must be

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[16] The fundamental requisite of due process of law is the opportunity to be heard (*Grannis v. Ordean*, 234 U. S. 385, 394; *Louisville & N. R. Co. v. Schmidt*, 177 U. S. 230, 236; *Simon v. Craft*, 182 U. S. 427, 436). The due process clause of the Fourteenth Amendment assures a hearing before the court or other tribunal empowered to perform the judicial function involved. That includes the right to introduce evidence and to have judicial findings based upon it (*Baltimore & Ohio R. Co. v. United States*, 298 U. S. 349, 368-369). The striking of a pleading presenting a lawful defense and the rendering of final judgment without a hearing upon the evidence in the then undefended proceeding is a denial of due process (*Hovey v. Elliott*, 167 U. S. 407, 413-418; *Windsor v. McVeigh*, 93 U. S. 274, 278; *McVeigh v. United States*, 78 U. S. 259, 265-267).

regarded as a device adopted to prevent the consideration of this defense and the asserted federal defenses upon a hearing. This court has undoubted jurisdiction to review this decision as to the sufficiency of the objections to present the defenses of due process and equal protection and also in respect to the denial of these federal rights by the trial court in striking the objections and entering judgment, and by the Supreme Court in affirming that judgment (**Enterprise Irrigation District v. Farmers Mutual Canal Co.**, 243 U. S. 157, 164). Avoidance by the Illinois Courts of reference to the federal questions presented by the amended objections and the striking of the objections was as much against the federal rights claimed as though they had been directly refused (**Consolidated Coal Co. v. Illinois,** 185 U. S. 203, 206-7; **Chicago L. Ins. Co. v. Needles**, 113 U. S. 574, 579).

In affirming the trial court upon a technical pleading point, theretofore waived, and circumscribing the remedy of tax objection and withholding it from the Railroad, so that the plain intent of the statute providing the remedy was defeated, the Court imposed a different standard of pleading than was provided by Illinois law and was accepted in other similar cases, and deprived the Railroad of a hearing and an opportunity to present evidence, and denied it both due process and equal protection.

IN CONCLUSION.

It is respectfully submitted that this is a case of substantial importance and questions decided by the Illinois Courts are not compatible with prior decisions of this Court and that justice requires that this petition be allowed; and the petitioner, therefore, invokes the jurisdiction of this court and prays that a writ of certiorari issue

to review the decision of the Supreme Court of Illinois in this case, and further prays that, upon such review, the judgment of said court be reversed and the cause remanded.

Respectfully submitted,

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FILED
JUN 15 1956
HAROLD B. WILLEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 166

GULF, MOBILE AND OHIO RAILROAD COMPANY,
Petitioner,

vs.

PEOPLE ex rel. JAMES T. CALLAHAN, County Collector of Madison County, Illinois,
Respondent.

SEPARATE APPENDIX TO PETITION FOR A WRIT OF CERTIORARI CONTAINING RELEVANT OPINIONS, REPORTS AND ORDERS.

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APPENDIX A.

Opinion of the Supreme Court of Illinois.

Docket No. 33634—Agenda 33—September, 1955.

The People ex rel. James T. Callahan, County Collector, Appellee, v. Gulf, Mobile and Ohio Railroad Company, Appellant

Mr. Justice Daily delivered the opinion of the court:

Appellant, the Gulf, Mobile and Ohio Railroad Company, filed objections in the county court of Madison County to the county collector's application for judgment and order of sale of real estate, delinquent for nonpayment of taxes for the year 1951. A motion by the collector to strike the objections was sustained and, thereafter, the court entered judgment against appellant for $18,578.38, the amount of tax paid under protest and embraced by the objections. The revenue being involved, appellant has perfected a direct appeal to review both the order striking its objections and the subsequent judgment.

The parties agree, as indeed they must, that the Revenue Act requires all valuations upon which tax rates are developed and extended to be at full, fair cash value (Ill. Rev. Stat. 1951, chap. 120, pars. 501, 502). By its stricken objections, appellant, whose property was assessed at State level along with other railroads, alleged that its own property has been assessed at full, fair cash value but that it had been excessively and illegally taxed when locally assessed property in the county was fraudulently and intentionally undervalued at less than full, fair cash value. The objections further alleged that the fraud was brought about when the county assessor knowingly assessed local property "upon a valuation not to exceed 10.2 per cent of the full, fair cash value"; when the county

board of review knowingly closed and certified the tax lists and books without revising the general level of assessments; and when the Department of Revenue, which section 146 of the Revenue Act charges with the duty of lowering or raising the total assessed value of property certified by any county so that property will be assessed at its full, fair cash value, knowingly and intentionally fixed an equalization rate, or multiplier, at "a per cent which would produce a debased equalized and assessed valuation of not to exceed 60% of the full, fair cash value of locally assessed property." Appellant objected against paying taxes on rates higher than would have been developed if locally assessed property had been at one hundred per cent full, fair cash value in the taxing formula by which rates were computed. Translated into figures, it is appellant's contention that because locally assessed property was fraudulently and intentionally valued at less than full, fair cash value, the resulting increase in rates caused its tax bill of $45,017.81 to be excessive by $18,578.38.

Some question is raised as to whether appellant, who admits that its own property was correctly assessed, has pursued the proper remedy. We find, however, that this court has observed on several occasions that since valuations must be the result of honest judgment and not of mere will, it follows that an assessment may be impeached both when fraudulently made at too high a rate, and when fraudulently made at too low a rate (**People's Gas, Light and Coke Co. v. Stuckart**, 286 Ill. 164, 174; **Chicago, Burlington & Quincy Railroad Co. v. Cole**, 75 Ill. 591, 594). Further, in a long line of cases, it has been held that the question of discrimination in assessments may properly be raised on an application for judgment for delinquent taxes. (See: **People ex rel. Ross v. Chicago, Milwaukee, St. Paul and Pacific Railroad Co.**, 381 Ill. 58, 61, and cases there cited.) Here the essence of appellant's objections is that

there was a fraudulent discrimination resulting from the undervaluation of locally assessed property which had the effect of denying appellant equal protection of the Revenue Act, and of subjecting it to taxation lacking in both constitutional and statutory uniformity. We conclude that a proper remedy has been pursued.

Under section I of article IX of the Illinois constitution, the courts, in the absence of fraud, have no power to review or determine the value of property fixed for purposes of taxation by the administrative officers to whom such function has been delegated. (**People ex rel. Tedrick v. Allied Oil Corporation**, 388 Ill. 219; **Keokuk & Hamilton Bridge Co. v. People**, 145 Ill. 596; **Spencer & Gardner v. People**, 68 Ill. 510.) It is only when the valuation has been fraudulently made that it is subject to judicial review. (**Kinderman v. Harding**, 345 Ill. 237; **People's Gas, Light and Coke Co. v. Stuckart**, 286 Ill. 164.) In the latter regard, we have held that error in the exercise of honest judgment will not invalidate the tax, that fraud is never presumed, and that mere overvaluation is not sufficient to establish fraud. (**People ex rel. Miller v. Chicago, Burlington and Quincy Railroad Co.**, 300 Ill. 399; **Keokuk and Hamilton Bridge Co. v. People**, 161 Ill. 514.) On the other hand, it is held that overvaluation may be so excessive, under some circumstances, as to justify the conclusion that it was not honestly made and that it was known to be excessive. In such cases courts will intervene to prevent a constructive fraud. (**People ex rel. Rhodes v. Turk**, 391 Ill. 424; **Pacific Hotel Co. v. Lieb**, 83 Ill. 602.) Where an assessment is sought to be impeached for fraud, the burden is on the objector to show either actual fraud by clear and sufficient evidence, or to show that an assessment is so grossly excessive as to amount to evidence of fraud and an indication that the taxing authorities, in making the same, wilfully and intentionally discriminated against the said objector. (**People ex rel.**

Tedrick v. Allied Oil Corporation, 388 Ill. 219; **People ex rel. Johnson v. Robison,** 406 Ill. 280.) Although the foregoing cases speak only in terms of fraudulent overvaluation of property, we are of the opinion that logic and justice require that the same established principles apply where an assessment is sought to be impeached on the grounds of fraudulent undervaluation. Cf. **Coulter v. Louisville & Nashville Railroad Co.,** 196 U. S. 599, 49 L. ed. 615; **Sundry Lake Iron Co. v. Township of Wakefield,** 247 U. S. 350, 62 L. ed. 1154; **Sioux City Bridge Co. v. Dakota County,** 260 U. S. 441, 67 L. ed. 340.

The first question which presents itself is whether, in light of the principles enunciated in the cited cases, appellant's objections sufficiently charged either actual or constructive fraud. Insofar as actual fraud is concerned it is elementary that it devolves upon the party claiming it to state the facts relied upon as constituting it. (**Sterling Gas Co. v. Higby,** 134 Ill. 557; **Sanitary District v. Gifford,** 257 Ill. 424; **Anderson v. Anderson,** 339 Ill. 400.) In the objections before us the various steps taken by the taxing authorities are set forth and, in general terms, are alleged to have been fraudulent, wrongful and illegal. Bearing in mind, first, that mere overvaluation or undervaluation is not sufficient to establish fraud and, second, that the presumption obtains that the transactions assailed by appellant were done in good faith and with honest motives, it is apparent that such general charges, unaccompanied by any facts showing fraudulent or dishonest actions or motives, are mere expletives and conclusions of the pleader and are not good pleading. As such, the charges were not admitted by the collector's motion to strike and the trial court properly held that the objections failed to sufficiently charge actual fraud. **Owens v. Green,** 400 Ill. 380; **People ex rel. Parker v. Board of Appeals,** 367 Ill. 559; **Sanitary District v. Gifford,** 257 Ill. 424; **Fogg v. Blair,** 139 U. S. 118, 35 L. ed. 104.

Considering next the question of whether appellant's final pleading is sufficient to make a showing of constructive fraud, we find it alleged generally that locally assessed property was valued, assessed and equalized at not exceeding sixty percent of its full, fair cash value, whereas appellant's property was assessed and equalized at the full, fair cash value thereof. By means of a schedule, drawn by appellant and incorporated into the objections, it is specifically alleged that the full, fair cash value of all locally assessed property amounted to $827,453,141 for the year 1951, but that all of such property had been placed on the Madison County tax rolls for that year in an amount totaling only $496,471,885. The same schedule bears the allegation that the full, fair cash value of appellant's property was $2,302,180. It is appellant's contention that the 330 million dollar discrepancy in the reckoning of locally assessed property values is so gross as to demonstrate that the taxing authorities could not have been honest in their valuation, thus entitling appellant to relief from a constructive fraud. We are of the opinion, however, that the rule of law contended for cannot be applied to the case made out by the bare allegations of value relied upon.

It is alleged that "locally assessed property was not assessed at its full, fair cash value." Standing alone this is but a conclusion of the pleader. We have the further allegation, however, by means of appellant's schedule, that the full, fair cash value of locally assessed property was $827,452,131. For all that appears in the objections, the figure alleged by appellant has been arrived at by the mechanical process of recomputing values on the basis of the bare conclusion that the equalized assessed valuation arrived at by the taxing authorities represented but sixty per cent of the full, fair cash value of locally assessed property. In the absence of facts showing a basis, such a mechanical increase in the values fixed by the taxing au-

thorities is itself merely a conclusion of the pleader. There are no facts alleged which either afford a basis for accepting the allegation that local property was assessed at other than its full, fair cash value, or which would permit a court to make the comparison in values the appellant seeks to draw.

It is our conclusion, therefore, that the objections do not state sufficient facts to make out a case of constructive fraud, within the meaning of the authorities relied upon by appellant, and we hold that the county court was justified in sustaining the motion to strike them. Accordingly, its judgment is affirmed.

Judgment affirmed.

(R. 10-14.)

APPENDIX B.

Dissenting Opinion of the Honorable Harry B. Hershey, Chief Justice.

Chief Justice Hershey, dissenting:

To deny a hearing on the merits because of a pleading defect seems to me violative of both the letter and spirit of modern procedural statutes and rules of practice. As a result of both legislative enactment and prior judicial opinion, this court is committed to the position that pleadings are to be liberally construed with a view of doing substantial justice between the parties.

Section 235 of the Revenue Act of 1939 requires a taxpayer to specify "the particular cause of objection" and directs the courts to "determine the matter in a summary manner, without pleadings, and * * * pronounce judgment as the right of the case may be." To determine the sufficiency of a tax objection from a "pleading" standpoint, one must consider whether it adequately informs the court and opposing counsel of the defense relied upon. (**People v. Chicago, Burlington and Quincy Railroad Co.**, 281 Ill. 500, 503; **People v. Shortall**, 287 Ill. 150, 151.) In the instant case I do not understand how there could have been the slightest doubt as to the nature of the defense. If the objection were more explicit it doubtless would be subject to the criticism of alleging evidentiary facts.

A case directly in point is **People v. K. and H. Bridge Co.**, 287 Ill. 246, where this court stated at pages 250-1: "There was a legal objection to the amount of the tax, which the appellant had a right to prove, and the court erred in striking it from the files. That objection was that the property was arbitrarily, knowingly and fraudulently assessed at its full market or cash value while all other property was arbitrarily and knowingly assessed at about

forty per cent of such value in accordance with an established rule and long custom for assessing property * * * It is sufficient for an objector to show such willful and intentional violation of the constitutional provision, and where an assessment shows a very great disparity and discrimination, which could not reasonably have arisen from an error of judgment, the courts will give relief. * * * The Objection showed such alleged disparity and discrimination between the full cash value of appellant's property and the valuation of forty per cent of such cash value of all other property, and the appellant had a right to prove the objection." I say the same in this case—*the appellant had a right to prove the objection.* (Emphasis added.)

(R. 14.)

APPENDIX C.

Constitutional Provisions, Statutes and Rules Involved.

1. **Due process and equal protection clauses of Fourteenth Amendment.**

> "* * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."
>
> (1955 Ill. Rev. Stat., Vol. I, p. 6.)

2. **Provisions of the 1939 Revenue Act, as amended and in effect in the year 1951, providing for full value assessments of all property subject to ad valorem taxation.**

General provisions in respect to the value at which locally assessed property is to be assessed.

> "§ 20. Real property shall be valued as follows:
>
> (1) Each tract or lot of real property shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale. * * *"[1]
>
> (1951 Ill. Rev. Stat., Ch. 120, Par. 501.)

> "§ 21. Personal property shall be valued as follows:
>
> (1) All personal property, except as herein otherwise directed, shall be valued at its fair cash value. * * * "[2]
>
> (1951 Ill. Rev. Stat., Ch. 120, Par. 502.)

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[1] Other paragraphs of Sec. 20 provide for the same method of evaluating leaseholds, buildings or non-carrier structures on canals, railroads, etc.

[2] Other paragraphs of Sec. 21 provide a similar basis for evaluating credits, and provide that labor or services, annuities, and roy-

Full Valuation Acts of 1945.

The following analysis relates only to the applicable provisions of the statute which are here involved and which were a part of the so-called FULL VALUATION REVISION of 1945, or should be considered in connection with that revision for the purposes of the present case.

Provisions of the Act Before July 1, 1945, and in Effect Until January 1, 1946.	Provisions of the Act After July 1, 1945, and Effective January 1, 1946, With Any Changes Effective in 1951.
ASSESSMENT OF RAILROAD PROPERTY.	
	"Sec. 80. The Department shall assess all property owned or used by railroad companies operating within this State, as of April first annually, except property found by the Department to be noncarrier real estate as hereinbefore defined.
	"The Department shall, in determining the fair cash value of the property assessed by it, value all the property of any railroad company as a unit but shall make due allowance for any noncarrier real estate.

alties shall be valued at "present value" and that capital stock, except of manufacturing, mining, printing and publishing, stock breeding, banking and building and loan companies, shall be valued at fair cash value by the Department of Revenue, and that in the case of the excepted capital stock such value shall be assessed at a local level as in the case of other locally assessed property.

"For the purpose of determining the fair cash value of the property of any railroad company the Department shall take into consideration the actual or market value of the shares of stock outstanding, the actual or market value of all bonds outstanding and all other indebtedness as shall be applicable, for operating the road, provided, in determining the market value of any such stock or indebtedness the Department shall consider quotations for the next preceding five years; the net earnings of the company during the five calendar years preceding the assessment date; and such other information as the Department may consider as bearing on the fair cash value of the property: Provided, that the facts hereinbefore named shall not be conclusive upon the Department in determining the fair cash value of the property of a railroad company. The assessment by the Department shall include capital stock and all other property of railroad companies except such property as

Not Amended

is found by the Department to be noncarrier real estate as hereinbefore defined: Provided that only so much of the intangible personalty of foreign corporations as has a business situs in Illinois shall be included and so much of the intangible personalty of domestic corporations as has a business situs in other states shall not be included."

Sec. 80; Chap. 120, Par. 561.[3]

LISTING AND DESCRIPTION OF RAILROAD PROPERTY.

"Sec. 85. The right of way, including the superstructures of first, second, third and other main tracks and all side tracks and turnouts, and the stations and improvements of the railroad company on such right of way and all other operating property and non-operating personalty of such railroad company shall be denominated 'railroad track' and shall be so listed and valued, and shall be described in the assessment thereof as a strip

[3] Section references are to 1939 Revenue Act, as amended. Page and paragraph references are to 1951 Illinois Revised Statutes.

Not Amended

of land extending on each side of such railroad track and embracing the same, together with all the stations and improvements and other operating property thereon, commencing at a point where such railroad track crosses the boundary line in entering the taxing district, and extending to the point where such track crosses the boundary line leaving such taxing district, or to the point of termination in the same, as the case may be, containing .... acres more or less (inserting name of taxing district, boundary line of same, and number of acres and length in miles), and when advertised or sold for taxes no other description shall be necessary: * * *."

Sec. 85, Ch. 120, Par. 566.

RAILROAD PROPERTY ASSESSED AND EQUALIZED AT FULL, FAIR CASH VALUE.

"Sec. 86. The *full fair cash* value of the operating property and non-operating personalty of every railroad company subject to assessment shall be listed and

taxed in the several taxing districts in the proportion that the length of all the track owned or used in such taxing district bears to the whole length of all the track owned or used in this state, except the value of all station houses, depots, machine shops or other buildings of an original cost exceeding $1,000, which shall be deemed to have a situs in the taxing district in which the same are located. * * *

"The Department shall equalize and distribute the *full, fair cash* value of the property of every railroad company (other than non-carrier real estate) to the respective taxing districts entitled thereto and shall certify the same to the county clerks of the respective counties who shall extend taxes against such values the same as against other property in such taxing districts." (Italics, new language.)

Sec. 86, Ch. 120, Par. 567.

The words "full fair cash" were inserted in the first paragraph and the words and figure "full, fair cash" were inserted in the second paragraph of this section by the 1945 amendments.

S. B. 229, L. 1945, 1212.

RAILROAD PROPERTY LISTED AND TAXED AS REAL ESTATE.

"Sec. 88. The county clerk shall procure, at the expense of the county, a record book, the form to be prescribed by the Department, in which to enter railroad property as listed for taxation, and shall enter the valuations [as] assessed, corrected and equalized in the manner provided by law; and against such assessed, corrected or equalized valuation, as the case may require, the county clerk shall extend all the taxes thereon for which said property is liable. And at the proper time fixed by law for delivering tax books to the county collector, the clerk shall attach a warrant, under his seal of office, and deliver said book to the county collector, upon which the said county collector is hereby required to collect the taxes therein charged against railroad property, and pay over and account for the same in the manner provided in other cases. Said book shall be returned by the collector and filed in the

The word "as" stricken, in 1945, S. B. 229. Section substantially the same since 1872. L. 1871-1872, Sec. 43, General Revenue Act of 1872.

L. 1937, Page 1011, Sec. 10 of Act of July 8, 1937, Ill. R. S., Ch. 120, Par. 56.10.

office of the county clerk for future use. The taxes on all railroad property shall be extended as on real estate, and shall be subject to the same penalties, dates of payment and methods of enforcement as other real estate taxes." (Underlined for emphasis.)

Sec. 88, Ch. 120, Par. 569.

THE DEPARTMENT'S GENERAL DUTIES AND POWERS.

"Sec. 130. The Department shall: * * * (3) Prescribe general rules and regulations, *not inconsistent with law*, for local assessment officers relative to the assessment of property for taxation, which general rules and regulations shall be binding upon all local assessment officers and shall be obeyed by them respectively until reversed, annulled or modified by a court of competent jurisdiction; * * * (7) Equalize the valuation and assessment of property throughout the State between the different counties of the State and fix

Not Amended

the aggregate amount of the assessment for each county upon which taxes shall be extended; * * *"

Sec. 130, Ch. 120, Par. 611. (Italics ours.)

"Sec. 131. The Department shall have power:

"(10) To adopt, from time to time, rules *not inconsistent with law*, for ascertaining the fair cash value of the capital stock, including the franchise, of corporations assessed by it, for ascertaining the fair cash value of railroad property assessed by it, and for the guidance of local assessment officers relative to the assessment of property for taxation." (Italics ours.)

Not Amended

Sec. 131, Ch. 120, Par. 612.

THE DUTY OF DEPARTMENT TO EQUALIZE LOCALLY ASSESSED PROPERTY.

Limited and Proportionate Equalization—Stricken and Not Replaced.

Sec. 146. The Department shall act as an equalizing authority. It shall examine the abstracts of property as-

Full Value Equalization Provided Without Limitation and Without Authority to Deviate.

Sec. 146. The Department shall act as an equalizing authority. It shall examine the

sessed for taxation in the several counties as returned by the county clerks [and the original assessments made by it], and shall equalize the assessments as in this Act provided. The Department [may so] lower or raise the total assessed value of property in any county as returned by the county clerk [as shall make the property in such county bear a just relation to the assessed value of property in other counties. The total amount of such increase or decrease in any one county shall not exceed ten per cent of the total assessed value of all property in the State as returned for purposes of taxation. The Department shall not reduce the aggregate assessed valuation in the State; nor shall it increase such aggregate valuation, except in such amount as may be necessary to a just equalization. The Department may proceed to equalize assessments in any year after the tenth day of September for the counties from which it has received the complete abstract of assessment and for which it abstracts of property assessed for taxation in the several counties as returned by the county clerks and shall equalize the assessments as in this Act provided. The Department *shall* lower or raise the total assessed value of property in any county as returned by the county clerk *so that such property will be assessed at its full, fair cash value.*

By means of a comparison of assessed valuations, as revised by boards of review or boards of appeals, as the case may be, and estimated full, fair cash values established through the analysis of property transfers, property appraisals, and such other means as it deems proper and reasonable, the Department shall annually ascertain and determine the percentage relationship, for each county of the State, between the valuations at which locally-assessed property is listed by assessors and revised by boards of review or boards of appeals, as the case may be, and the estimated full, fair cash value of such property.

shall have completed its original assessment of property, when it shall have received the complete abstract of assessment from four-fifths of the counties of the State and shall have completed its original assessment of property for four-fifths of the counties of the State. In case the abstract of assessment has not been received from any county, or in case the original assessment of property by the Department has not been completed, the Department may, for the purpose of such equalization, estimate the total valuation of property to be determined by the local assessment officers for such year or the total original assessments of property for any county to be made by the Department, as the case may be (consideration being given to whatever information the Department may have as to the total valuation of property for any county to be determined by the local assessment officers or as to the total original assessments of property for any county to be

With the ratio so ascertained and determined for each county, the Department shall then ascertain the amount to be added to or deducted from the aggregate reviewed assessment on property subject to local assessment jurisdiction in order to produce a ratio of assessed to full, fair cash value equivalent to one hundred per cent.

Sec. 146, Ch. 120, 627.
(Italics, new language.)

Note. (Sec. 146, as amended in 1945, provided *one hundred percent* (100%) of full, fair cash value as the standard or measure to be applied in the equalization of all property assessed at the local level, and required a calculation of the multiplier upon this basis. Since the state level assessments were required to be equalized at one hundred percent, uniformity was provided for, unless elsewhere or otherwise limited or obstructed.

This section prior to 1945 provided that the Department should equalize county assessments so that

made by it, as the case may be, for such year, and to the total valuation of property for any county, as determined by the local assessment officers, or to the total original assessments made by the Department, as the case may be, for the preceding year). Upon the completion of all assessments for any county and the receipt of the abstract of assessment from such county by the Department after an equalization has been completed, as hereinbefore provided, and certification thereof has been made, the assessments for such county shall be equalized on the same basis of value as the assessments for other counties have been theretofore equalized and certification thereof s h a l l thereupon be made to the county clerk of such county.] Language within [ ] stricken by 1945 amendment. Underlining is for emphasis. 1943 R. S., Ch. 120, 627.

they had a "just relation," limited the percent of increase in any county and restricted changes in the aggregate state valuation to those necessary for a "just equalization." Notwithstanding other provisions of the act requiring assessments to be at fair cash value, and that the Department should supervise such assessments and perform its equalization function in a manner "not inconsistent with law," these provisions tacitly accepted and tolerated a system of f r a c t i o n a l assessments throughout the state wholly lacking in uniformity between counties and taxing districts, and gave legislative recognition to the use by the Department of subjective factors and undefined "moral" and other considerations, which might be changed at any time or to meet any situation, in equalizing such assessments upon an ununiform basis. There had thus been enabled and sanctioned the avoidance of both full value and uniformity. The "just relation" and "just equalization" provi-

sions and 10 percent limitation were stricken in 1945 and not replaced. Thereafter there existed no statutory obstacle to, or expressed or implied permission for the avoidance of, equalized assessment at full, fair cash value.

This section, as amended, was the cornerstone of the 1945 Full Valuation Revision.)

AUTHORITY OF DEPARTMENT TO ESTIMATE.

(Repealed, 1945 Act.)

[Sec. 147. In all cases of partial return from any county where the number of defaulting towns or districts does not exceed one-third of the whole number of towns or districts in the county, the Department may estimate the valuation in the towns or districts from which returns have not been received and may equalize the total valuations as in other cases.] * * * 1943 R. S., Ch. 120, 628.

Stricken—Not Replaced.

AUTHORITY OF DEPARTMENT TO CLASSIFY AND DEVIATE.

(Repealed, 1945 Act.)

[Sec. 148. The Department in equalizing the valuation of property as listed and assessed in different counties, shall consider the following classes of property separately, viz.:

(1) Lands, including lands classified as non-carrier real estate;

(2) Town and city lots, including lots classified as non-carrier real estate;

(3) Railroad property other than non-carrier real estate;

(4) Capital stock, including the franchise, of corporations and associations, assessed thereon by the Department;

(5) Personal property locally assessed including the capital stock and franchises of corporations and associations locally assessed thereon.

After such consideration, the Department shall deter-

Stricken—Not Replaced

mine such rates of addition to or deduction from the listed or assessed valuation of each of such classes of property in each county, or to or from the aggregate assessed value of each of such classes in the State, as may be deemed by the Department to be equitable and just, such rates being in all cases even and not fractional; and such rates, as finally determined by the Department, shall not be combined.] * * * 1943 R. S., Ch. 120, 629.

(1951 amendment to act adding Sec. 148a, not effective till 1/1/52. L. 1951, 1180.)

DUTY OF DEPARTMENT TO DETERMINE "RATE PERCENT" FOR MULTIPLIER TO PRODUCE FULL, FAIR CASH VALUE, WITHOUT LIMITATION OR QUALIFICATION.

Proportionate Equalization—Out.

Sec. 149. The assessments of all property shall be equalized by adding to the aggregate assessed value thereof in every county in which the Department may [believe the valuation to be too low,] such rate per cent as will raise the same to

Full Value—In.

Sec. 149. The assessments of all property, *as returned by the county clerks,* shall be equalized by adding to the aggregate assessed value thereof in every county in which the Department may *find the valuation to be less than full, fair cash value,* such rate per cent as will

its [proper proportionate value,] and by deducting from the aggregate assessed value thereof, in every county in which the Department may [believe the valuation to be too high] such per cent as will reduce the same to its proper value. [Town and city lots shall be equalized in the same manner herein provided for equalizing other property, and, at the option of the Department, may be combined and equalized with lands.] —R. S. Ch. 120, 630.

raise the same to its *full, fair cash value,* and by deducting from the aggregate assessed value thereof, in every county in which the Department may *find the valuation to be more than full, fair cash value, such per cent as will reduce the same to its full, fair cash value.*

Sec. 149, Ch. 120, 630. (Italics, new language.)

[ ] language stricken, 1945 amendment.

(1951 amendment to Sec. 149, not effective till 1/1/52. L. 1951, 1180.)

AUTHORITY OF DEPARTMENT TO CLASSIFY AND TO DEVIATE TO OBTAIN "JUST" EQUALIZATION.

(Repealed, 1945 Act.)

Sec. 150. When the Department shall have separately considered the several classes of property, as hereinbefore required, the results shall be combined in one ta-

ble, and the same shall be examined, compared and perfected in such manner as the Department shall deem best to accomplish a just equalization of assessments throughout the State, preserving, however, the principle of separate rates for each class of property. 1943 R. S., Ch. 120, 631.

Stricken — not replaced. (No authority to thus deviate from full value given by any other provision of the act.)

DUTY OF DEPARTMENT TO CERTIFY MULTIPLIER FOR LOCALLY ASSESSED PROPERTY AND OF RAILROAD ASSESSMENTS.

Sec. 151. When the Department shall have completed its equalization of assessments for any year, it shall certify to the several county clerks [the rates] finally determined by it to be added to or deducted from the listed or assessed valuation of [each class of] property in the several counties. Language within [ ] stricken by amendment. (Remainder of section unchanged except as indicated in italicized language.) 1943 R. S., Ch. 120, 632.

Note. (Sec. 151 as amended is correlated with Sec. 146 which requires the cer-

Sec. 151. When the Department shall have completed its equalization of assessments for any year, it shall certify to the several county clerks *the percentage* finally determined by it to be added to or deducted from the listed or assessed valuation of property in the several counties, as returned by the respective county clerks. The respective assessments made by the Department on the capital stock, including the franchise, of corporations assessed by it (other than of the capital stock of railroad companies) shall be certified by it to the county clerks of

tification of a rate percent. Elimination of property classification in the certification of the former rates is essential for the purpose of obtaining uniformity and is to be considered in the light of the repeal of Secs. 148 and 150.

It is to be noted that Secs. 151 and 146 were unaffected by the enactment of new Sec. 148a and the amendment to 149 in 1951, which added and amended sections became effective January 1, 1952. The Act still requires, therefore, the certification of the multiplier as the rate percent necessary to produce uniform equalization at 100 per cent of full, fair cash value. In fact, up to the present year there has been no attempt to comply with new Sec. 148a.)

the respective counties in which such companies or associations are located. And said clerk shall extend the taxes for all purposes on the respective amounts so certified, the same as may be levied on the other property in the taxing districts in which such companies or associations are located.

The Department shall also certify to the county clerks of the proper counties the assessments made by it on property owned or used by railroad companies operating within this State, and the distribution of such assessments among the respective taxing districts within the several counties. The county clerk shall extend the taxes for all purposes on the respective amounts so certified, the same as against *other property* in the taxing districts to which such assessments of railroad property are allocated or distributed.

The assessments on the capital stock, including the franchise, of telegraph companies shall also be certified

to the county clerks by the Department.

Sec. 151, Ch. 120, 632. (Italics, new language.)

Sec. 162a, added to 1939 Revenue Act in 1945, as recommended by Joint Legislative Commission.

Sec. 162a. The maximum percentages of full, fair cash value at which taxes may be extended are those set forth in the Constitution and in this and other Acts; provided that further restrictions shall apply to taxing districts of less than 500,000 population, as follows:

1) During the five-year period beginning January 1, 1946, and ending December 31, 1950, unless changed by referendum as provided in paragraph 5 of this section, no tax rate shall be restricted to a percentage less than sufficient to yield an amount equivalent to the product of: (a) the full, fair cash value of the taxable property in the taxing district as equalized or assessed by the Department for the current year, (b) the 1942 ratio of assessed to full, fair cash value reported and published by the Department for the county in which the taxing district is situated, *provided* that if the taxing district lies in more than one county, the average ratio of assessed to full, fair cash value shall be used, which average ratio shall be determined by the Department and shall give effect to the relative full valuations of property in the areas of the taxing district situated in the two or more counties, and (c) the maximum tax rate applicable to taxes levied for the year 1945, or authorized for the year 1946 by a referendum held prior to January 1, 1946.

2) During the five-year period beginning January 1, 1946, and ending December 31, 1950, unless changed by referendum as provided in paragraph 5 of this section, the

greatest amount by which any tax rate may exceed the product of: (a) the 1942 ratio of assessed to full, fair cash value reported and published by the Department for the county in which the taxing district is situated, *provided* that if the taxing district is situated in more than one county, the average ratio of assessed to full, fair cash value shall be used, which average ratio shall be determined by the Department and shall give effect to the relative full valuations of property in the area of the taxing district situated in the two or more counties, and (b) the statutory tax-rate limitation or rate authorized by referendum as effective for the levy and assessment year 1942 shall be 15 per cent; *provided* that in no one year during the aforementioned five-year period shall the tax extension be increased to exceed 5 per cent of the maximum extendable in 1942. The provisions of this paragraph shall not modify any other restrictions upon maximum extendable tax rates. The restrictions herein provided shall be inapplicable to any established tax rate limit expressed in dollars. The restrictions herein provided shall be inapplicable to limit tax levies for which minimum qualifying rates are prescribed to establish eligibility to receive state grants for poor relief and equalization aid for educational purposes to less than such minimum qualifying tax rates.

3) The maximum tax rate authorized by any referendum held prior to January 1, 1946, in accordance with the provisions of any Act authorizing the extension of tax rates, shall continue in force as provided by the terms of such referendum or the statutory provision applicable thereto; *provided* that, beginning January 1, 1946, the tax rate extended shall not exceed one-half the tax rate authorized by any such referendum prior to January 1, 1946, with the further limitation that during the five-year period beginning January 1, 1946, and ending December 31, 1950, the tax rate extended shall not exceed the rate required to produce a tax extension greater by fifteen per cent than the

maximum permissible tax extension for the year 1942 or the year in which the referendum was held, whichever is later; *provided further* that in no one year during the aforementioned five-year period shall the tax extension be increased to exceed five per cent of the maximum extendable for the year 1942 or for the year in which the referendum was held, whichever is later.

4) If the tax rate authorized by a referendum held before January 1, 1946, for extension thereafter is reduced by the provisions of paragraph 3 above, so that the rate as reduced is insufficient to yield a tax extension equivalent in amount to the maximum that could have been produced by the extension of the rate authorized under the terms of the referendum on the assessed valuation of property for the taxing district in the year which the referendum was held then the tax rate authorized by the referendum shall only be reduced to a rate which is sufficient to yield such amount.

5) During the five-year period beginning January 1, 1946, and ending December 31, 1950, the question of establishing a tax rate limit either higher or lower than that otherwise provided for by law may be presented to the legal voters of any taxing district by the corporate authorities of the taxing district and shall be so presented upon the receipt by such corporate authorities, not less than ninety (90) days before a regular or special election, of a petition signed by not fewer than five (5) per cent of the legal voters in such taxing district, which percentage shall be determined on the basis of the number of votes cast at the last general election preceding the filing of such petition or one thousand legal voters in such taxing district whichever is less, specifying the tax rate to be submitted; *provided* that no tax rate limit shall be lowered more than one-third beneath the limit otherwise provided for by law. In case no general election is held in such a taxing district, the petition shall be signed by not fewer than

five (5) per cent of the registered voters in such district or one thousand (1,000) such registered voters, whichever is less. Such proposition shall be submitted to the voters at the next regular election for officers for such taxing district held during the aforementioned five-year period; *provided* that if no such election is required to be held at intervals of not more than two years, such proposition may be submitted at a special election to be called by the corporate authorities of such district at a time to be fixed by such corporate authorities within the aforementioned five-year period. In case such an election is called pursuant to the filing of a petition, the election shall be set for a day not less than ninety (90) days nor more than one hundred twenty (120) days following the filing of such petition.

The ballots to be used in any such election upon the question of adopting either a lower or higher tax-rate limit than that otherwise provided for by law shall be separate ballots and shall be in substantially the following form:

Shall the maximum tax rate for the ..... fund of ..... (identify taxing district) .....be established at.....per cent on full, fair cash value?	YES NO

If a majority of all ballots cast on such proposition shall be in favor of the proposition, the tax-rate limit so established shall become effective with the levy and assessment year next following the election and it shall be the duty of the county clerk to reduce, if necessary, the amount of any taxes levied thereafter, in such a manner as to give effect

to the rate limit so established unless and until the rate so established is changed as provided by law; provided that nothing in this section shall be construed as precluding the extension of taxes at rates less than that authorized by such election. *Provided, further*, that the proposition to authorize either a higher or lower tax rate limitation than that otherwise applicable may, in the discretion of the corporate authorities, when acting on their own motion, or the petitioners requesting a vote on such proposition, be restricted in effect to the tax levy of a given year or series of years, the rate limitation thereafter to revert to that otherwise provided by law. No more than two such propositions shall be submitted for any one fund of any taxing district at any one election and in case two such propositions are submitted at one election and a majority of votes cast on each proposition shall be in favor thereof, only the tax-rate limit authorized in the proposition receiving the higher number of favorable votes shall become effective; *provided* that propositions to establish tax-rate limits either higher or lower than those otherwise authorized by law shall not be submitted more often than once in any two-year period.

No proposition to increase a tax-rate limit in accordance with the provisions of this section shall be submitted unless the tax-rate limit in question stands at the maximum that may be secured by the terms of any referendum elsewhere provided for by law.

If the proposition to be presented in the manner set forth in this section provides for the adoption of a tax-rate limit higher than that authorized to be submitted by any other statutory provision, the amount by which such tax-rate limit may exceed the applicable statutory limitation shall be twenty-five (25) per cent.

The referenda authorized by the terms of this section are subject to the provisions of Sec. 28-3 of 'The Election Code,' approved May 11, 1943.

6) If the provisions of any paragraph of this section shall be declared unconstitutional or invalid by the final decision of any court of competent jurisdiction, the provisions of the remaining paragraphs shall continue in full force and effect.

This section shall not apply to any tax rate of any taxing district having a population of 500,000 or more inhabitants.

(Sec. 162a, Ch. 120, 643a, S. B. 314, L. 1945, 1229.)

3. **Provisions of the 1939 Revenue Act defining the remedy of tax objection.**

Section 194 of the Act provides that a taxpayer who has protested the payment of a tax is required to appear at the next application of the County Collector for judgment and order of sale and to object to the taxes in relation to which the protest is made, and provides further:

> "Where the taxpayer appears and files objection the court shall hear and *determine the matter according to the right of the case* and enter judgment for any part of the taxes, *or order a refund of any part of the taxes, so paid under protest.* Appeals shall lie from such orders of the court as in other cases of objection to judgment and order of sale for taxes. Refunds shall be made by the collector in accordance with the final orders of the court, and the amount of such refunds shall be deducted from the taxes of the taxing bodies whose taxes were adjudged illegal, in the same or a subsequent year." (Ch. 120, 675.)

Subsequent sections of the Act provide the time and manner of making application for judgment and require the publication of waiver of notice that such application will be made, and that judgment will be sought fixing the correct amount of any tax paid under protest.

Section 234 relates to the form of the application of the Collector for judgment and requires him to report all lands and property on which taxes or special assessments have not been paid and to support the same by affidavit. By statute this must include railroad property (Sec. 88).

Section 235 provides:

> "Sec. 235. The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court shall hear and determine the matter in a *summary manner*, without pleadings, and *shall pronounce judgment as the right of the case may be.* * * * If any party objecting to any tax paid under protest is entitled to a refund of the amount, or any part thereof, so paid under protest, the court shall enter judgment accordingly. * * *
>
> "In all judicial proceedings of any kind, for the collection of taxes and special assessments, *all amendments may be made which, by law, could be made in any personal action pending in such court,* * * *." (Italics ours.)

APPENDIX D.

Rule 39 of the Illinois Supreme Court.

As in effect prior to January 1, 1956:

"Each party shall file a printed brief in the cause * * * No alleged error or point not contained in such brief shall be raised afterwards * * *."

As in effect on and after January 1, 1956:

"Each party to a cause in this court shall file a printed brief * * *. No alleged error or point not contained in the brief shall be raised afterwards * * *."

APPENDIX E.

Extracts from official reports pertaining to inequality in state and local level assessments of property in Illinois, presented to the Illinois Supreme Court by Appellant's brief in that court (pp. 24-29, Appendix 59-63, R. S.).

1945 and 1955 Reports to the Governor and General Assembly on Illinois Tax Problems.

Report of joint legislative committee to investigate tax problems of March 2, 1945 (Preliminary to Full Valuation Acts of 1945).

State of Illinois.

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Joint Legislative Committee to Investigate Tax Problems.

Report to Governor Dwight H. Green.

March 2, 1945.

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Springfield, March 2, 1945.

To His Excellency, Hon. Dwight H. Green, Governor of Illinois:

Since its appointment in mid-1944, this Committee has devoted itself to a careful and thorough appraisal of the property tax problem in Illinois. Numerous hearings and conferences have been held with representatives of civic organizations, associations of local governmental officers, and taxpayers' groups, as well as with various state, county, and local officials. Recommendations reflecting almost every shade of opinion have been urged in these meetings and we have made an earnest attempt to work out a practical and equitable solution to a highly involved problem.

I. The Problem.

The statutory provision fixing "full fair cash value" as the ". . . assessed valuation for all purposes of taxation, limitation of taxation, and limitation of indebtedness . . ." until 1943 at least had been rather generally ignored. Property typically was assessed at ratios of full valuation ranging from 20 to 75 per cent. While changes in the basis of assessment had been made from time to time by various assessing officers, these ordinarily were slight in importance and gradual in their nature and but rarely had the practice of assessing fractionally been explicitly discarded. Although the present full-value requirement has been a part of Illinois property tax law since 1926, the

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courts and the legislature alike have condoned or ignored departure from this standard. But the implications and practical effects of the practice of debasing assessments to a level below market or full valuation generally have been neither appreciated nor fully understood.

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II. Specific Proposals.

To date, this Committee has agreed on the principal features of a program designed to afford a lasting and thoroughgoing resolution of the present difficulties. It deserves emphasis that this program is one that would entail a minimum of substantive change in our revenue laws and procedures and that would preserve in its essentials the characteristic features of the local financial structure of the State.

The problems to which reference has been made obviously are the direct effects of non-uniformity in assessment, a condition that has prevailed through the whole

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history of the property tax in Illinois. Their solution then, basically, is the adoption by the General Assembly of measures designed to secure assessment uniformity.

Intra-county assessment uniformity. In order to secure a greater measure of uniformity and consistency in the treatment of assessable property within the counties, we recommend that machinery be created to strengthen county equalization while at the same time preserving in its elements the present structure of local assessment performed principally by elective township assessors.

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Inter-county assessment uniformity. There would remain the problem of securing uniformity among the counties. At the present time, the Department of Revenue is responsible for equalizing local assessments (county total assessed valuations) for the application of the state property tax rate. As suggested, no state rate has been extended since 1932; as a consequence, the Department, and before it the Tax Commission, has not in recent years exercised its equalization authority. * * * Furthermore, *the present statutory requirement of full-value assessment deserves to be clarified. The present equalization powers are hedged in with restrictions on the extent to which individual county assessments and the state total may be altered. Some of these should be removed, so that the Department could proceed as expeditiously as possible to secure uniform full-value assessment for the entire State.*

* * * * * * *

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State assessments. If the foregoing program were enacted into law, and local assessments increased to full value, capital stock and the property of railroad compa-

nies would be treated the same as property subject to local assessment jurisdiction. Full-value assessment means uniformity among counties and this in turn *implies a correspondence within any one county between the assessment ratio applied to state-assessed property and that on property assessed locally.*

Report of the School Problems Commission No. 3, March, 1955 (Submitted in respect to School Problem Legislation at the 69th General Assembly):

From page 7 of the Report:

Letter of Transmittal.

To Governor William G. Stratton, and the Members of the 69th General Assembly:

The Illinois School Problems Commission No. 3 was created pursuant to House Bill No. 923 of the Sixty-eighth General Assembly, approved June 30, 1953. The members hereby submit the final report containing its major recommendations, and a brief summary of some of the research studies upon which they are based. Respectfully submitted. (Signed by the Chairman and fourteen other members of the Commission and by the Director of Finance and Superintendent of Public Instruction, *ex officio* members.)

From page 9 of the Report (Summary of Major Recommendations):

"12. Equalization of assessments by the Department of Revenue in accordance with the letter and spirit of existing statutes."

From page 20 of the Report:

The Commission is gravely concerned by the continuing deterioration of administration of existing provisions for

the assessment of property and collection of taxes levied against both real estate and personal property in this state.

The failure to assess both real and personal property at realistic values, coupled with the failure to apply a proper multiplier for equalization purposes, has been found to be an ever present factor in the plight of financially embarrassed school districts throughout the state.

In 1946, immediately following the enactment of the so-called "Butler Bills" (Ill. Revised Statute, Chapter 120, Sec. 627-633) the average equalized assessed value of real estate in Illinois was at least 74 percent of the full fair cash value. By 1952 equalized assessed valuations of real estate had dropped to 51 percent.[3]

Note:

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(3) According to information received from the Department of Revenue, percentages of assessments to full values for the years 1946 to 1952 were as follows:

1946 — 74.48	1949 — 62.18
1947 — 64.00	1950 — 56.78
1948 — 63.20	1951 — 52.62

1952 — 51.32

From page 21 of the Report:

In Cook County the de facto classification of real property has resulted in residential property in that county having, in 1953, an average equalized assessed valuation of only 47 percent of fair market value.

* * * * * * *

We do not intend to imply by reference in this report to Cook County that assessment, either of real estate or of personal property is less adequate or less equitable there than in certain other areas of the state. Such is not the case. There are many other counties in Illinois where the

general level of assessments, both of real estate and of personal property is lower. Instances have been cited to us of original assessments of real estate at 5 percent or less of full value, resulting in equalized assessed values of less than 29 percent of full value in individual townships. The school finance problem is, however, more serious in the suburban area of Cook County than in most other areas, due to the combination of factors previously mentioned which has brought such a tremendous increase in school population to some of the suburban school districts. Much can be done, however, throughout the state to improve present assessment practices. Poor assessment in one area does not justify equally poor assessment in another.

From page 22 of the Report:

One of the more serious consequences of this inequity of assessment is the resultant effect upon the distribution of state equalization aid to schools. Under our present formula, or any other formula dependent upon the same factors, the district which has the lowest equalized assessed value will, assuming its educational tax rate is equal to or above the qualifying rate, receive, proportionately, the greatest share of state aid.

Thus in two unit districts each having actual property values equal to $30,000 per pupil in average daily attendance, one having equalized assessed values of only 50 percent of actual value would, under the 1953-55 formula, receive state equalization aid in the amount of $98 per pupil, while the other, having equalized assessed values of 70 percent of actual value, would receive only $68 per pupil in such aid. Assuming that each district has 5,000 pupils in grades 1 through 12, the district which lies in the county or township which has done the better job of chiselling on its assessments will receive $490,000 in equalization aid

against $340,000 for the other, an advantage of $150,000. No change in formula can solve this problem. Its solution requires equitable assessment of all property, real and personal, throughout the state.

Two major factors contribute to the inadequacy and inequity of assessment in Illinois. They are: * * *

From pages 22-23 of the Report:

2. This brings us to the second major factor, i. e., failure of the Department of Revenue to require equalization of assessments between counties at an adequate and realistic level (required by the statute to be between 99 and 101 percent of full fair cash value as determined by the Department). There are numerous instances where the Department of Revenue has applied a multiplier of one in counties where the assessed value of the real estate within the county is 50 percent or less of full value. This soft attitude of the Department, in our opinion, encourages public officials in Cook County in their classification of real estate for assessment purposes and contributes to the low level of assessed values in suburban residential areas. It also relieves assessment officers in other counties of the necessity of equalizing assessments within and between townships.

APPENDIX F.

JUDGMENT OF THE COUNTY COURT OF MADISON COUNTY, ILLINOIS.

Order on Objections of Gulf, Mobile and Ohio Railroad Company to Application of the Collector for Judgment for 1951 Taxes Paid Under Protest.

The objections of Gulf, Mobile and Ohio Railroad Company, to the application of the Collector of taxes for Madison County, Illinois, for judgment for 1951 taxes paid under protest having come on for hearing, and the Court having been fully advised in the premises, finds:

1. That the Court heretofore, on the thirtieth day of December, 1954, sustained the motion of the Collector to dismiss and strike from the files in this cause the certain objections of the Gulf, Mobile and Ohio Railroad Company, as amended to taxes levied for the year 1951, upon said Objector's property in Madison County, Illinois, and paid by the Objector under protest, numbered and identified as follows, to-wit:

Objector's Objection No. 1, to parts of County Taxes, and to other taxes levied for the year 1951, upon Objector's property in Madison County, Illinois:

Objector's partial, alternative objections to Objection No. 1, being the objections numbered: 2A-1, 2B-1, 2C-1, 2D-1, 2F-1, 2G-1, 2H-1, 3A-1, 3B-1, 3C-1, 4A-1, 5A-1, 6A-1, 6B-1, 7A-1, 8A-1, 8B-1, 9A-1, 10A-1, 10B-1, 11A-1, 12A-1, 13A-1, 14A-1, 15A-1, 15B-1, 15C-1, 15D-1, 15E-1, 15F-1, 15G-1, 15H-1, 15I-1, 15J-1, 15K-1, 15L-1, 15M-1, 15N-1, 16A-1, 16B-1, 16C-1, 16D-1, 16E-1, 16F-1, 16G-1, 17B-1, 17C-1, 17D-1, 17E-1, 17F-1, 17G-1, 17H-1, 18A-1, 18B-1, 18C-1, 18D-1, 19A-1, 19B-1, 19C-1, 20A-1, 20B-1, 20C-1, 20D-1, 20E-1,

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2. That the Collector is entitled to an order and judgment against the said Objector for the amounts of taxes to which the said objections dismissed and stricken from the files, as aforesaid, were made, except where the amounts paid by the Objector under protest upon said taxes are covered by other objections to which said motion was not directed and which should be reserved for future determination, as hereinafter provided.

It Is, Therefore, Ordered and Adjudged that the Collector shall have judgment upon his application against the said Objector for each and all of the items of tax to which the said dismissed and stricken objections were made by Objector's Objection No. 1, and by Objector's partial, alternative objections to Objection No. 1, being the certain objections numbered and identified as follows, to-wit: 2A-1, 2B-1, 2C-1, 2D-1, 2E-1, 2F-1, 2G-1, 2H-1, 3A-1, 3B-1, 3C-1, 4A-1, 5A-1, 6A-1, 6B-1, 7A-1, 8A-1, 8B-1, 9A-1, 10A-1, 10B-1, 11A-1, 12A-1, 13A-1, 14A-1, 15A-1, 15B-1, 15C-1, 15D-1, 15E-1, 15F-1, 15G-1, 15H-1, 15I-1, 15J-1, 15K-1, 15L-1, 15M-1, 15N-1, 16A-1, 16B-1, 16C-1, 16D-1, 16E-1, 16F-1, 16G-1, 17B-1, 17C-1, 17D-1, 17E-1, 17F-1, 17G-1, 17H-1, 18A-1, 18B-1, 18C-1, 18D-1, 19A-1, 19B-1, 19C-1, 20A-1, 20B-1, 20C-1, 20D-1, 20E-1, 20F-1, 20G-1, 20H-1, 20I-1, 20J-1, 20K-1, 20L-1, 21A-1, 21B-1,

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It Is Further Ordered and Adjudged by the Court that all other tax objections of the Gulf, Mobile and Ohio Railroad Company to any of said 1951 taxes be reserved for the future determination of this Court.

Michael Kinney,
County Judge.

APPENDIX G.

JUDGMENT OF THE SUPREME COURT OF ILLINOIS UNITED STATES OF AMERICA

State of Illinois } ss.
Supreme Court }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of January, in the year of our Lord, one thousand nine hundred and fifty-six, within and for the State of Illinois.

Present: Harry B. Hershey, Chief Justice
Justice Joseph E. Daily — Justice Walter V. Schaefer
Justice George W. Bristow — Justice Ralph L. Maxwell
Justice Ray I. Klingbiel — Justice Charles H. Davis
Latham Castle, Attorney General
Robert G. Miley, Marshal

Attest: Fae I. Searcy, Clerk Pro Tempore

Be It Remembered, that, to-wit: on the 19th day of January, 1956, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

People ex rel. James T. Callahan, County Collector of Madison County, Illinois, Appellee, vs. Gulf, Mobile and Ohio Railroad Company, Appellant.	Appeal from County Court Madison County Obj. No. 31. Error to
No. 33634	

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and in-

spected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the County Court of Madison County aforesaid, Be Affirmed in All Things and Stand in Full Force and Effect, notwithstanding the said matter and things therein assigned for error.

I, Fae I. Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 23rd day of March, 1956.

/s/ Fae I. Searcy,
Clerk pro tempore.

(Seal)

FILED
JUL 13 1956
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 166.

GULF, MOBILE AND OHIO RAILROAD COMPANY,
Petitioner,

vs.

PEOPLE ex rel. JAMES T. CALLAHAN, County Collector of Madison County, Illinois,
Respondent.

BRIEF

In Support of Objections to This Court's Jurisdiction and in Opposition to the Petition for Writ of Certiorari.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 166.

GULF, MOBILE AND OHIO RAILROAD COMPANY,
Petitioner,

vs.

PEOPLE ex rel. JAMES T. CALLAHAN, County Collector of Madison County, Illinois,
Respondent.

BRIEF

In Support of Objections to This Court's Jurisdiction and in Opposition to the Petition for Writ of Certiorari.

INTRODUCTORY OBSERVATION.

The State's Attorney of Madison County, Illinois, expressly elects to stand upon the opinion of the Supreme Court of Illinois as his response to the Petition for Certiorari. The question before that Court and the opinion rendered therein conclusively shows that the matter was decided by that Court solely upon questions of practice and procedure in the courts of Illinois in cases arising under Section 235 of the Revenue Act of 1939 (Section 716, Chapter 120, Illinois Revised Statutes for 1951) rela-

tive to the remedy of filing tax objections by taxpayers to ad valorem property taxes upon the application of the County Collector of taxes for judgment and sale of real estate for delinquent and unpaid taxes. Respondent will, therefore, respond to the Petition for Certiorari in this brief and will also direct his remarks to the question of this Court's jurisdiction to review the decision of the Illinois Supreme Court decided upon a matter of local practice and procedure.

OBJECTIONS TO THE JURISDICTION OF THE COURT TO GRANT WRIT OF CERTIORARI.

Respondent objects pursuant to Rule 24 (1 and 2) to the jurisdiction of this Court to grant a Writ of Certiorari in this cause on the ground that there was no federal question of substance decided by the Supreme Court of Illinois which is subject to review by the United States Supreme Court under Rule 19.

The jurisdictional question presented to this Court upon this Petition for Certiorari is as follows:

DOES THE UNITED STATES SUPREME COURT HAVE JURISDICTION TO REVIEW MATTERS OF LOCAL PRACTICE AND PROCEDURE IN THE STATE COURTS UNDER LOCAL STATUTES WHICH CREATE THE REMEDY AND GOVERN THE MANNER AND FORM OF THE PROCEDURE THEREUNDER?

ALTERNATIVE QUESTION PRESENTED FOR REVIEW.

Even if this Court should take jurisdiction in this cause, Respondent cannot acquiesce in Petitioner's conception of the questions directed to this Court. Those questions seek to avoid the law of Illinois governing the creation of the

remedy of filing tax objections and the manner and rules relating to procedure thereunder. Respondent deems the questions presented to be as follows:

(1) Did Illinois deprive Petitioner of due process or equal protection of the law by holding that Petitioner's tax objections failed to plead or allege sufficient facts which afford a basis for accepting the allegation that local property was assessed at other than its full, fair cash value, or which would permit the Court to make the comparison in values which the Petition seeks to draw?

(2) Stated in more concise language, did Illinois deprive Petitioner of due process or the equal protection of the law by holding that Petitioner's written tax objections failed to allege facts, as distinguished from conclusions of the pleader, sufficient to make a clear showing of the unequal effect of the tax as to justify Petitioner's allegation of fraud in the manner of assessment valuations?

(3) Does the due process and equal protection of the law under the Fourteenth Amendment prohibit inequality by state tax officials in the assessment of different classes of property for ad valorem taxes?

ARGUMENT.

I.

OBJECTIONS TO JURISDICTION.

A.

Rules of Court.

Rule 19 of this Court provides that a Writ of Certiorari is not a matter of right but of sound judicial discretion and will be granted only where there are special and important reasons therefor, and requires that a federal ques-

tion of substance to have been decided by the state court, which question had not, previously been determined by this Court, or decided in a way probably not in accord with applicable decisions of this Court.

Rule 24 permits objections to the jurisdiction of the court to certiorari to be included in briefs in opposition to the petition. Under these rules Respondent expressly relies upon the opinion of the Illinois Supreme Court to show that that Court's decision was rendered upon matters of local practice and procedure. In further support of that Court's decision, Respondent proceeds to a discussion of the Illinois Statutes involved and cases decided by the Illinois Supreme Court thereunder.

B.

Illinois Statutes.

The remedy and practice of filing tax objections in Illinois is created and governed by Section 235 of the Revenue Act of 1939 (Section 716, Chapter 120, Illinois Revised Statutes for 1951). Petitioner quotes in part from this Section of the Statute, but by deliberate and artful omission fails to quote the Statute sufficiently in full and omits a material portion of the sentence of the Statute quoted (see Petitioner's Petition, page 20). The sentence of Section 235 more fully quoted is as follows:

> "**The Court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to entry of judgment against the same**, the Court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be: provided, that no person shall be permitted to offer any such defense unless such writing specifying the

particular cause of objection shall be accompanied by an official original or duplicate tax collector's receipt," etc. (Emphasis supplied.)

The first part of the above sentence of the statute was omitted by Petitioner and this omission is apparently for the artful purpose of creating an illusion as to the Illinois remedy and procedure on tax objections, which illusion is directly and diametrically opposed to the interpretation of the Illinois Supreme Court as to the procedure thereunder. Those decisions are also opposed and contrary to Petitioner's interpretation of the language, "summary manner, without pleadings". To correct this illusionary contention, Respondent will proceed to a discussion of Illinois cases decided as to the manner of procedure under this Section of the Illinois Revenue Law.

C.

Illinois Decisions on Tax Objection Procedure.

Petitioner would have this Court believe that the above Section of the Statute does not require any pleadings whatsoever. But this is not true. Although formal complaints, answers and motions are not contemplated as in civil cases governed by the Illinois Civil Practice Act generally, the Illinois Supreme Court has expressly held that:

> "Where an application for judgment and order of sale against lands for nonpayment of taxes is made, the delinquent list serves as a declaration and the notice as process."
>
> People v. Coal Belt Electric Railway Company, 311 Ill. 29, 31-32, 142 N. E. 495.

It has further been held by that Court that:

> "The written objections state the issue upon which the cause is submitted for hearing. They constitute

the statement of the defense and must be regarded as a part of the record."

People v. Wabash Railroad Company, 271 Ill. 206, 207, 110 N. E. 1025.

In the case of People v. C. R. I. & P. Railway Company, 269 Ill. 513 (110 N. E. 49), on page 517 the Illinois Supreme Court said:

"It is also contended by appellee that the objections of appellant are not properly before the court because they are not made a part of the record by the bill of exceptions. They are copied in full by the clerk in the common law record, but appellee **insists they were not pleadings**, and could only be made a part of the record by incorporating them in the bill of exceptions. It is true, the common law form of pleading does not obtain in cases of this character, but it has been held that the delinquent list filed by the collector is in the nature of a pleading and serves the office of a declaration (Wiggins Ferry Co. v. People, 101 Ill. 446). The objections of the property owner **serve the purpose of a plea by him, and we think the objections are properly preserved as a part of the record without being incorporated in the bill of exceptions**" (Emphasis supplied).

Under the Illinois Statute the delinquent list prepared and filed by the tax collector constitutes a pleading and takes the place of a complaint or declaration. The written objections of the taxpayer constitute a pleading and take the place of a plea or answer of the taxpayer. The express language of Section 235 requires the written objections of the taxpayer **to specify the particular cause of the objection.** The meaning of the remainder of the sentence of Section 235, particularly the phrase "summary manner, without pleadings," means that no further pleadings are

required and that the tax collector is not required to plead or file any formal pleadings in answer to an owner of property objecting to taxes (People v. Dunleth Bridge Co., 322 Ill. 99, 155, 152 N. E. 526).

The tax collector is not required to file any further written pleadings or motions but he can, if he sees fit, as in the case before the Court, file a written motion to strike the taxpayer's objections from the files (People v. C. & E. I. Railway Co., 336 Ill. 506, 509, 168 N. E. 294). The collector's motion to strike need not be in writing, but may be orally made (People v. Sullivan, 238 Ill. 386, 388, 86 N. E. 306).

In considering the effect of Section 235 of the Illinois Revenue Act, the Illinois Supreme Court has held that the only triable issues in the County Court are those raised by the written objections and that any ground not so stated will not be considered for the first time on appeal in the Illinois Supreme Court (People v. C. & N. W. Railway, 1 Ill. 2d 255, 259, 115 N. E. 2d 339) (People v. Trustees, 407 Ill. 291, 294, 95 N. E. 2d 421) (People v. N. Y. C. Railroad Co., 369 Ill. 192, 196, 15 N. E. 2d 689) (People v. U. of I., 328 Ill. 377, 36 N. E. 2d 724) (C. & A. Railroad Co. v. People, 155 Ill. 276, 279, 40 N. E. 602) (Karns v. People, 73 Ill. 274, 280).

It is readily apparent from the above decisions of the Illinois Supreme Court that the remedy of filing tax objections in Illinois is created by an Illinois Statute and that the manner of local procedure and the pleadings thereunder are governed by the statute and the decisions of the Illinois Supreme Court. It now becomes important to analyze the opinion of the Illinois Supreme Court in this case which Petitioner seeks to review by Certiorari.

D.

Opinion of Illinois Court.

Respondent filed a written motion to strike Petitioner's tax objection filed in the County Court of Madison County and specified in such objections twenty-one different grounds therefor, asserting that the tax objections did not constitute a legal defense to the application of the collector for judgment. The County Court granted the Motion to Strike and Petitioner appealed to the Illinois Supreme Court which has affirmed the judgment of the County Court. In the opinion of the Illinois Supreme Court (page 4, Petitioner's Appendix) the Illinois Supreme Court says:

> "The first question which presents itself is whether, in light of the principles enunciated in the cited cases, appellant's objections sufficiently charge either actual or constructive fraud."

The Court then held that it was apparent that general charges of fraud, unaccompanied by any facts showing fraudulent or dishonest actions or motives are mere expletives and conclusions of the pleader and are not good pleading; that such charges were not admitted by the collector's motion to strike and that the objections failed to sufficiently charge actual fraud. As to whether the written objections charged constructive fraud, the Court referred to a schedule prepared by the Petitioner which amounted to a recomputation of what the Petitioner claims should have been the total value of all property locally assessed in Madison County and stated that (Petitioner's Appendix, page 5):

> "We are of the opinion, however, that the rule of law contended for can not be applied to the case made by the bare allegations of value relied upon."

The Illinois Court then said (Petitioner's Appendix, page 5):

> "It is alleged that 'locally assessed property was not assessed at its full, fair cash value'. Standing alone this is but a conclusion of the pleader. We have the further allegation, however, by means of **appellant's schedule,** that the full, fair cash value of locally assessed property was $827,452,131. For all that appears in the objections, the figure alleged by appellant has been arrived at by the mechanical process of recomputing values on the **basis of the bare conclusion** that the equalized, assessed valuation arrived at by the taxing authorities represented but 60 per cent of the full, fair cash value of locally assessed property. **In the absence of facts showing a basis, such a mechanical increase in the values fixed by the taxing authorities is itself merely a conclusion of the pleader. There are no facts alleged which either afford a basis for accepting the allegation that local property was assessed at other than its full, fair cash value, or which would permit a court to make the comparison in values the appellant seeks to draw.**" (Emphasis supplied.)

The Illinois Court then held that disregarding the conclusions of the pleader, "the objections do not state sufficient facts to make out a case of constructive fraud, within the meaning of the authorities relied upon," by the Petitioner in this Petition. It, therefore, is obvious that the Illinois Court decided the case below solely upon a matter of local practice and procedure in the state courts of Illinois relating to tax objections and that there is no federal question of substance within the meaning of Rule 19 for this Court to review on Certiorari. This court, therefore, has no jurisdiction to review this case on Petition for Certiorari and this Petition should be denied.

Moreover, the Illinois Court held, and there can be no serious contention, that the written objections of the Petitioner contained any matter or allegation which afforded the trial court or the Illinois Supreme Court a basis to make any comparison in values between the assessed valuations made by the Department of Revenue as to Petitioner's property and the assessed valuations made of all locally assessed property by the local assessors and as equalized by the Department of Revenue through its determination of an equalizing factor which, when certified to and applied by the County Clerk to locally assessed property, was designed to bring locally assessed properties to full, fair cash value. In this respect there was a complete void in the Petitioner's tax objections and the very heart of their contention was omitted from their tax objections by omitting allegation of facts which would afford such a basis for comparison in values. Petitioner simply failed to set forth matter of substance in its objections sufficient to bring it within the Illinois law regarding fraud, actual or constructive, in assessment valuations claimed to be discriminatory. This omission in substance in Petitioner's objections also fails to meet the law as announced by this Court in such cases to the effect that the taxpayer must make a clear showing of the unequal affect of the tax so as to justify their complaint (Charleston Federal Savings & Loan Association v. Alderson, 324 U. S. 182, 184, 89 L. Ed. 857, 65 S. Ct. 624; affirming 126 W. Va. 506; 30 S. E. 2d 513). The insuperable difficulty with Petitioner's Petition for Writ of Certiorari is that it runs headlong into the established decision of this Court in the last cited case on the matter of substance which it attempts to present. Consequently, Respondent will proceed to the argument made by Petitioner under its conception of this case.

II.

THERE WAS NO DENIAL OF DUE PROCESS OR EQUAL PROTECTION OF THE LAW TO THE PETITIONER UNDER THE ESTABLISHED DECISIONS OF THIS COURT.

The question which the Petitioner seeks to have reviewed by its Petition for Certiorari has already been passed upon by this Court in the case of Charleston Federal Savings & Loan Association v. Alderson, 324 U. S. 182, 89 L. Ed. 857, 65 S. Ct. 624. The similarity between the cited case and the case at bar is overwhelming because the discrimination claimed in the Charleston Association case was discrimination in the assessment valuations of property belonging **to the same class** as defined by the Statute of the State of West Virginia. That case is stronger than the case at bar due to the fact that **here the discrimination is claimed to be between properties which were not within the same class** under the provisions of the Illinois Revenue Act. The Supreme Court in the Charleston Association case treated an appeal as a Petition for Writ of Certiorari and considered the merits of the case. Upon a consideration of the merits the Court held that there was no violation of the equal protection of the laws of the Fourteenth Amendment in respect to the discrimination in assessment valuations of the two types of property involved within the same statutory classification. In the case at bar under Illinois law, the assessment of railroads for taxation is made under a separate and distinct section of the statute from all other taxable property and according to a different assessment formula which has recently been upheld by the Illinois Supreme Court and a Petition for Writ of Certiorari by this Court denied in the case of C. & NW. Railway Co. v. Department of Revenue, 6 Ill. 2d 278, ... N. E. 2d ...., certiorari denied .... U. S. ..., 100 L. Ed. 692, ... S. Ct. ... In the

Charleston Association case the Petitioners were building and loan associations whose personal property was classified under the Statute of West Virginia as Class 1 property. The local assessor valued the building and loan company money at 100 per cent, bonds notes and accounts receivable at 70 per cent, installment accounts at 65 per cent of face value. Livestock and agriculture products were valued at approximately 50 per cent of purchase value. Accounts receivable and notes of small loan companies were assessed at 85 per cent of face value. The court found that there was no unreasonable discrimination involved and that there was no denial of the equal protection of the law even though there was a difference in the mode of assessing the property of the petitioners in that case as compared with the assessment of like property of other taxpayers. The court said that the equal protection clause does not prohibit inequality in taxation, which is not shown to be the result of intentional or systematic undervaluation of some but not all of the **taxable property in a single class.** The Court found that there was a reasonable justification for the difference in the assessed valuations and denied the Petition for Writ of Certiorari. In the instant case **the property of the Petitioner is not like property of the same class** as the locally assessed property of other taxpayers whose property Petitioner claims to have been undervalued in assessment. The difference in treatment of Petitioner's property under the Illinois Constitution and provisions of the Illinois Revenue Act conclusively shows that the two classes of property can not be treated alike with exact equality. For that reason the difference in assessed valuations do not violate the equal protection clause of the Fourteenth Amendment.

Respondent desires to call attention to the provisions of Section 1, Article IX, Constitution of Illinois, 1870. That provision is as follows:

"The general assembly shall provide such revenue as may be needful by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the general assembly shall direct, and not otherwise; but the general assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, vendors of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates."

Under Illinois law the Illinois Supreme Court has construed the constitutional provisions as creating two classes of property for taxation. First, that the General Assembly could authorize the levying of a tax by values so that every person or corporation should pay tax in proportion to the value of his or its property, the value to be ascertained by some person or persons elected or appointed in such manner as the General Assembly should direct. The second part of the constitutional provision authorizes the General Assembly to tax peddlers, etc., **persons or corporations owning or using franchise or privileges in such manner as it shall from time to time direct by general law, uniform as to the class upon which it operates.** In compliance with the concluding part of the constitutional provision, the General Assembly has enacted as a part of the General Revenue Act of 1939, the sections exclusively applying to the assessment of railroads (Sections 79-90, The Revenue Act of 1939; Chapter 120, Sections 560-571,

Illinois Revised Statutes for 1951). Recognizing the difference of railroad property from other taxable property, Illinois enacted these Sections of the Statute solely and exclusively for the assessment of railroads and provided therein an entirely different formula to determine the assessed valuation of railroads for taxation as distinguished from all other property in Illinois subject to direct property taxes. The above Sections of the Statute delegate to the Department of Revenue, the successor to the State Tax Commission of Illinois, the power and duty to determine the assessed valuations of railroad property directly. The reason for this difference in treatment of railroad property was due to the fact that many railroads are interstate carriers owning property in many states of the Union and, in case of its rolling stock, only a part of which should be treated for tax purposes as subject to the jurisdiction of Illinois for taxation. Within the State of Illinois, a further breakdown in assessment valuations is required to be made and determined as between the various counties in which the railroad maintains its tracks and operates its property. No other taxpayer and no other type of property appears to be exactly comparable to the property of the railroad and, therefore, the difference by statute in the manner and treatment of railroad property for taxation as regards the manner of assessment. The main similarity between the railroad assessment Act and the remainder of the Illinois Revenue Act is that the value of the property is to be determined at the full, fair cash value thereof. Section 561, Chapter 120, Illinois Revised Statutes, 1951, requires the Department of Revenue in determining the fair cash value of the property of the railroad company to take into consideration certain factors which constitute the formula peculiarly and especially applicable to railroads. That formula was approved in the Chicago & Northwestern Railway v. Department of Revenue case above cited and as to which this Court has

denied Petition for Writ of Certiorari. Respondent desires to call attention to many other Sections of the Illinois Revenue Act of 1939, which do require all other property to be assessed at full cash value. Section 501, Chapter 120, Illinois Revised Statutes, 1951, requires real estate to be valued at its full cash value; Section 502 requires personal property to be valued at its fair cash value. All real estate and personal property, excepting the capital stock of certain corporations designated in Section 611, Chapter 120, Illinois Revised Statutes, 1951, and telegraph companies are assessed locally by local assessors, whose assessments are annually reviewed by the Department of Revenue according to Section 627 of Chapter 120, acting as an equalizing authority with the power to determine and certify an equalization factor or multiplier applicable to all locally assessed property in order to produce a ratio of assessed value to full, fair cash value equivalent to 100 per cent. The Department of Revenue, therefore, has a two-fold duty. As to railroads and the capital stock of certain corporations, it has and performs an assessment duty or function. As to all property locally assessed by the local assessor and Board of Review in each county, it has the equalization duty or function to determine the multiplier which is designed to bring uniformity as between the various counties of the state in the assessment by local officials (People v. Saad, 411 Ill. 390, 397, 104 N. E. 2d 273, 277). The assessment duty is set forth in Section 611 and the equalization duty is set forth in Section 627 of Chapter 120, Illinois Revised Statutes. As a result of the foregoing, it can readily be seen that **the Illinois Constitution permits and the General Assembly has treated railroad companies as a different class of taxpayers in the assessment of property for ad valorem taxes.** In regard to railroad companies a different formula is expressly provided by statute and a different method in the valuation and assessment of the property of railroad com-

panies is provided by the formula contained in the Statute, in arriving at the assessed values of railroad property. The manner of assessing railroad property and the formula used for determining its assessed valuation does not apply to any other taxpayer in Illinois. In the West Virginia case of Charleston Federal Savings and Loan Association v. Alderson, mentioned above, it appeared that even within the same class of property under the Constitution the local assessor employed a different method in the valuation and assessment of the property of building and loan associations and federal savings and loan associations from that employed in assessing Class 1 property of other taxpayers. The different method used by the West Virginia assessor was not one designated by statutory provision but one adopted by the local assessor in the manner of making the assessment. In that case this court said:

> "It is this difference in the mode of assessing the property of different taxpayers which petitioners contend has resulted in taxing the property of appellants at its full value and real estate of other taxpayers at less than its full valuation, in violation of the equal protection clause."

That same question is a question in this case, except that the difference in valuation is between the property of the railroad company, which is separately treated under the Illinois Statute, and the property of other taxpayers, which cause its dissimilarity to railroad property as valued and assessed under other Sections of the Revenue Act. If the inequality in the Charleston Federal Savings and Loan Association case was not in violation of the equal protection clause, it is submitted, a fortiori, that the inequality in the instant case is not in violation of the equal protection clause because railroad property in Illinois is treated as a separate classification of property from all other taxable

property and has a separate and distinct statutory method and formula for the determination of its assessed valuation. In the Charleston Federal Savings and Loan Association case the evidence which showed a basis for true comparison between property of the **same class** failed to disclose any unreasonable discrimination resulting in inequality in violation of the equal protection clause.

In the instant case the law of Illinois conclusively establishes the difference in treatment of railroad property from all other property for taxation purposes and **the Petitioner in its written objections wholly failed to set forth any facts or allegations establishing any basis for comparison between the assessed valuation of locally assessed property and the assessed valuation of railroad property.** This basis for comparison was not alleged or stated in the Petitioner's objections in the case at bar, and this Court held in the Charlestown Federal Savings and Loan Association case that the evidence before the Court in that case failed to prove such inequality and discrimination. The Illinois Supreme Court has in other cases held that in tax objection cases it is necessary for the objector to make allegation of sufficient facts to show a basis for accepting a statement of the objector as to a higher valuation on his property over the property of others, and that a blanket allegation to that effect without providing other items of like property with which to make comparison in values with the objector's property was insufficient. In other words, **the objector must state facts sufficient for the Court to make the comparison in values which the objector seeks to draw** (Illinois Commercial Telephone Co. v. Smothers, 411 Ill. 67, 103 N. E. 2d 59; Budberg v. County of Sangamon, 4 Ill. 2d 518-522, 123 N. E. 2d 479; Department of Revenue v. Warren Petroleum Corporation, 2 Ill. 2d 483, 119 N. E. 2d 215). Moreover, it has long been settled that the Fourteenth Amendment imposes no iron rule of equal taxation (Bells Gap

Railroad Company v. Commonwealth of Pennsylvania, 134 U. S. 232, 33 L. Ed. 892, 10 S. Ct. 533; St. Louis Southwestern Railroad Co. v. Arkansas, 235 U. S. 350, 59 L. Ed. 865, 35 S. Ct. 99). And the Supreme Court of Illinois has repeatedly announced that under the constitutional provision of that state there is no prohibition against classification of property and taxpayers into different classes and that the uniformity referred to in the Constitution applies to the property of like kind and character and similarly situated (People v. Olymphia Fields Country Club, 374 Ill. 101, 28 N. E. 2d 109; Routt v. Barrett, 396 Ill. 322, 71 N. E. 2d 660). Furthermore, the Supreme Court of Illinois has specifically pointed out that railroads can be classified under a general law uniform in effect and assessed in a different manner and by different officers than those referred to in the first clause of Section 1 of Article IX of the Illinois Constitution (People v. Union Electric Power Co., 392 Ill. 271, 285, 64 N. E. 2d 534, 540).

In further substantiation of the decision of the Illinois Supreme Court, Respondent's Motion to Strike the Petitioner's tax objection **did not admit facts which were not well pleaded.** In the attempt to set up the defense of actual fraud Petitioner's tax objections repeated and reiterated such words as "fraudulent," "discriminatory," "wrongful," "illegal," etc., which the Illinois Supreme Court held to be "general charges, unaccompanied by any facts showing fraudulent or dishonest actions or motives, and to be mere expletives, conclusions of the pleader and not good pleading." It is elementary in the law that facts showing the fraudulent acts must be specifically alleged. It cannot be seriously contended under the Illinois law of pleading that such general charges of fraud would be admitted as against a motion to strike. Under the Illinois law, there were no facts set forth to show any improper, corrupt or illegal motive in making the assessment of

locally assessed property by the local assessors or in determining the multiplier by the Department of Revenue. In attempting to charge fraud Petitioner's objections were wholly deficient (People v. Coen, 415 Ill. 73-79, 112 N. E. 2d 119; People v. Robison, 406 Ill. 280, 285, 94 N. E. 2d 151, 154; People v. Marine Trust Company, 375 Ill. 488, 492-494, 31 N. E. 2d 933).

CONCLUSION.

For the reasons expressed in the opinion of the Supreme Court of Illinois and in this brief, it is respectfully submitted that Certiorari should be denied.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 166.

GULF, MOBILE AND OHIO RAILROAD COMPANY,
Petitioner,

vs.

PEOPLE ex rel. JAMES T. CALLAHAN, County Collector of Madison County, Illinois,
Respondent.

PETITIONER'S REPLY BRIEF.

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PETITIONER'S REPLY BRIEF

To Brief in Support of Objections of Respondent.

I.

1. **As to Respondent's "Analysis."**

Respondent's "analysis" of the statutory and pleading requirements for an Illinois tax objection appears meaningless unless calculated to arouse a suspicion that something undisclosed was wrong with the form, filing and statement of issues of the subject tax objections. It is obviously intended to imply that there were defects in these objections viewed as a declaration of Petitioner's defense, without squarely saying what such defects are, in

addition to the obscure and previously unheard of, and, we believe imagined, fault mentioned in the opinion of the Illinois Supreme Court in its consideration of the state defense (Petition, 10).

The pertinent provisions of the Illinois statutes and the rules applicable to this proceeding as uniformly laid down by all previous decisions construing that Act are as stated by the Petitioner (Petition, 20-23). No case cited by Respondent varies therefrom, or modifies or limits the traditional procedure and statutory standard to any degree. We assert, with confidence and categorically, *the subject tax objections were timely filed, in writing, and set forth by express allegation of both ultimate and detailed facts every triable issue of fact and law upon the federal defenses. The objections met every pleading test heretofore applied, however strict.*

The stated values relied upon were not only alleged and available for comparison, if the Court in fact wished to place and examine them side by side, but the comparison was made both in Schedule A and in the specific objections. The values were not only stated but were juxtaposed to facilitate such a comparison, and the results of such a comparison were expressly alleged for each tax (Schedule A, Abst., 8; Specific Objections, Abst., 10-21).

2. **Respondent's Untenable Assumptions.**

Respondent assumes that:

(a) **The Illinois Supreme Court considered the sufficiency of the allegations of the subject tax objections upon the federal defenses.** This is *not* the case although the effect of Illinois decision is to deny to Petitioner the opportunity of a hearing upon such defenses, and this in itself is a denial of due process, if such defenses were in fact asserted.

(b) **This Court is precluded from considering the sufficiency of the facts alleged in such tax objections upon the federal defenses, because of some local rule of practice or procedure.** In the first place, there is no rule of practice or procedure, and no statutory standard, upon which the Illinois decision can be grounded, and no cited case holds that there is such a rule or standard. The statute was complied with in every respect. The objections clearly and unequivocally declared and alleged every essential fact of the federal defenses (Petition, 7-8; Abst., 3-21, 28-40). Beyond question, the court has jurisdiction to require that these defenses be heard. The strange, obscure and unfounded criticism made by the State Supreme Court was confined to the non-federal defense of constructive fraud, and this court is in no respect limited thereby in its consideration of the record upon the federal defenses.

(c) **This court is precluded from considering the federal defenses by the arbitrary and capricious refusal of the Illinois court to consider the allegations of fact upon which the defenses of denial of equal protection and due process rest.** This assumption is insupportable. The sufficiency of allegations presenting the defenses of denial of equal protection and due process under the 14th Amendment are themselves federal questions. Even if the Illinois court had considered these defenses, which it did not, this court may and should examine the record and decide these questions in the light of federal rules and upon the basis of federal standards. It makes little difference whether the Illinois court paid no attention to the actual allegations or, having glanced, arbitrarily chose to ignore stated fact after stated fact, paragraph after paragraph, and similarly failed to give consideration to the specific objections realleging all essential facts for each tax in every taxing district, since the effect is the same in either case. The denial of an opportunity to be heard was arbitrary, and cannot be supported upon the record here presented.

3. The Fallacy of the State Court's Opinion Is Not Binding in This Court.

The opinion of the state court is fantastically unrealistic, viz., in the "absence of facts showing a basis" such a "mechanical increase" in values fixed by the authorities is a conclusion of the Objector. What *absence?* None. Every fact is alleged, specifically, definitely! No mechanical operation is relied upon, except as it could be relied upon by the taxing authorities themselves in debasing valuations to less than .60 of full, fair cash value, and then only for demonstration of the effect of the debasement otherwise specifically stated upon the tax rates levied upon Objector's property (Schedule A, Abst., 8; Specific Objections, Abst., 10-21). Here, upon the federal questions, this court may consider *what is alleged,* and clearly is not bound or circumscribed by an inaccurate depiction of the facts really presented for its consideration.

II.

The Illinois Constitution and 1939 Revenue Act require uniformity and equality in the valuation of locally assessed property and railroad property.

Respondent's Division II is an endeavor to avoid the legal effect of the asserted facts, which are implicitly admitted, by justifying the discrimination and inequality thereby established. Decisions are relied upon wherein property has been permitted to be classified for purposes of taxation and unequally taxed between classes, if equally taxed within each class.

Wherever this has been approved, it has been provided for by valid state law, and that law has been enforced without discrimination contrary to its provisions. Such a discrimination in the *ad valorem* taxation of property is

not lawful in Illinois.* Full, fair cash value is the only standard of property valuation and is uniformly applicable to both locally assessed property and railroad property. Respondent succeeded in misleading the trial court on this and other fallacious contentions presented by the motion to strike, but in the Supreme Court conceded this point. That court said:

> "the parties agree, as indeed they must, that the Revenue Act requires all valuations upon which tax rates are developed and extended to be at full, fair cash value" (Separate Appendix A, 1).

We respectfully refer to the many cases of both courts in exact parallel heretofore cited (Petition p. 17, notes 12, 12a; pp. 21-23, note 15).

IN CONCLUSION.

We respectfully pray that this court examine the record in this case, give due consideration to the extreme importance of both the principles and issues which are here presented, and allow the petition herein so that Petitioner may be heard upon its federal defenses to the excessive and discriminatory taxes here in question.

Respectfully submitted,

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* The Full Value Acts of 1945 were intended to prevent the administrative failure to obtain uniform full value assessments of railroad and all other forms of taxable property as required by law (Separate Appendix C). Sec. 88 of the 1939 Revenue Act especially provided for the taxation of railroad property exactly as "other real estate" (Separate Appendix C, 16).